

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 26

Brighton & Hove City Council

Subject:	Response to a report request on Badger Management		
Date of Meeting:	21 July 2008		
Report of:	Assistant Director, Property & Design		
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Key Decision:	No	Forward Plan No. N/A	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report is in response to a letter request by Cllr Duncan, under Procedural Rule 19.3, regarding a proposal for the council to introduce a ban on badger culling on farmland owned by Brighton & Hove City Council. This request was presented to Policy and Resources Committee on 6 March, where the Chairman asked officers to bring a report to a future meeting.
- 1.2 The report considers the current legal framework, the problems badgers can cause, the implications of a ban and the current political debate.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member for Central Services approves that a ban on badger culling be resisted, and that the authority relies on the existing statutory controls in place.
- 2.2 That the Cabinet Member for Central Services agrees that should national legislation be revised, or the Government issue further guidance in relation to disease control to reduce the spread of TB, the authority should review its policy in light of any further advice or guidance.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 Legal Status

Badgers and their setts are protected under the Protection of Badgers Act 1992 which makes it illegal to kill, injure or take badgers or interfere with a badger sett. Interference with a sett includes blocking tunnels or damaging the sett in any way. There are provisions within the legislation to allow action to be taken

against badgers and their setts under a licence granted by Natural England. Licences to cull badgers are only granted by Natural England if the problem cannot be resolved by any other alternative means.

3.2 Problems associated with Badgers in Rural Areas

The recent rapid rise in the badger population has emphasised the tensions between the animal and those living and farming in rural areas. National surveys carried out in the 1980's and 1990's showed that the badger population increased by 77% over this period (Reference: Natural England; Problems with Badgers in Rural Areas, Technical Information Note TIN005). As a result of this population increase, badgers can come into close contact with humans, pets, other wildlife and farming livestock. These in turn can give rise to a number of problems ranging from damage to agricultural land and crops, to undermining houses and buildings or flood defences and the transfer of Bovine TB which is a disease that can be transmitted to humans and to and from other mammals. The excavation of setts under roads and railways can also cause structural damage and risk to vehicle and human safety.

3.3 Although some householders enjoy the opportunity to witness badgers, when foraging for food badgers can cause damage to lawns, fruit and vegetable crops and upset dustbins. They can also damage houses and other structures by excavating beneath them and thereby increasing the risk of subsidence.

3.4 Tuberculosis (TB)

Badgers are also linked with tuberculosis (TB) in cattle. The disease is caused by the bacterium *Mycobacterium Bovis* (M.Bovis) which is one of the family of bacteria which also causes Johnes Disease in cattle and Leprosy in people. M.Bovis has been found in several wild animal species including badgers and can also infect people. Nowadays the majority of human TB is caused by different organisms but in the past M.Bovis was a major cause of death in people in Britain.

3.5 Animals (livestock, pets and wildlife) are probably more likely to be infected by M.Bovis and when they are infected they can pass on the bacterium through their breath, saliva, urine and droppings to other mammals and humans. M.Bovis can survive in the environment for several months especially in mild conditions.

3.6 TB spreads between cattle slowly compared with some infections, but will spread. The government regularly tests cattle for TB using skin and blood tests. Animals which react to the test are compulsorily slaughtered and restrictions are placed so that the animals may not move on or off the affected farms except direct to slaughter under licence until further tests show that the herd is clear. This process seriously disrupts farming businesses and bears a significant cost to both the farmer and central government. In Wales alone the Welsh Assembly have estimated that Bovine TB in cattle could cost Wales £30 million a year by 2012 if present trends continue.

3.7 Hilary Benn, as Secretary of State for the Environment, announced on 7 July 2008, having considered all of the information available, that a cull of badgers as an effective means of controlling Bovine TB might or might not work and decided that the Government's policy will be not to issue any licences to farmers to cull badgers for TB control although they will remain open to revisiting this policy under exceptional circumstances or if new scientific advice become available. (Refer to Appendix 5).

3.8 The Government intends to invest £20 million over the next 3 years, having already invested £18 million in the last 10 years, to strengthen the UK's chances of successfully developing a vaccine. It could be some time before an oral vaccine for badgers or a cattle vaccine becomes available.

3.9 Licences

Any action which interferes with a sett requires a licence. A sett is defined in the Protection of Badgers Act 1992 as any structure or place which displays signs indicating current use by a badger. The term "current use" is open to interpretation but does not mean simply that badgers are actually present at the time of inspection.

3.10 Where a licence is sought to kill or remove badgers, for example because they are believed to have killed lambs or other livestock, or indeed are causing damage to property and structures, Natural England requires good evidence that badgers are responsible before the issue of a licence to cull can be considered. The provisions of the Act allow licensed actions against badgers causing serious damage. The badger is nevertheless a protected species and all other reasonable means of resolving the problem must first have been attempted or be shown to be ineffective or impractical.

3.11 An application for licence can be made by either the owner or occupier of the relevant land or property. Whilst it is foreseeable that long term tenants of the Council could make an application to Natural England without the Council's knowledge, we have procedures in place requesting all tenants inform the council should they intend to submit an application. All applications for a licence are considered by Natural England in accordance with their strict procedures. (Refer to Appendix 1).

3.12 The Implications for the Council's Agricultural Estate

The eastern part of Brighton & Hove City Council's agricultural estate is located within the Cuckmere and Ouse Valley badger "hot spot". When operated as a dairy farm, Upper Bevendean Farm was subject to movement restrictions when a 'reactor' cow was identified during routine testing. This resulted in a cull of infected cattle and a more detailed and regular period of testing in line with government requirements on disease control. The restrictions were finally lifted in February 2008. Whilst much of the council's farmland estate is arable, thus reducing the possibility of TB, many of our farms with cattle are located adjacent

to urban areas and the risk of humans coming into contact with the disease increases.

3.13 The welfare of cattle is clearly of primary importance to the Councils' farming tenants. For some, the sale of cattle for beef is their sole form of livelihood. From the Council's perspective, as a landlord, healthy cattle on its farms make a major contribution to the rental income the Council receives from the agricultural estate. Their presence also provides an important tool in maintaining areas of public open access, chalk grassland and local food initiatives which are targets set out in the Council's Downland Initiative. It is envisaged that as the propensity of Bovine TB increases there will in turn be a decline in the number of cattle grazing and farmed on the Estate and on the Downs in general.

3.14 The Council must also consider its own obligations in terms of the maintenance of property, roads, historic monuments and flood defences across the farmland estate.

3.15 **The Political Debate**

Cllr Duncan has raised a number of issues in support of a ban on culling on land owned by the council. This view would appear to be supported by the current Government's policy for the control of Bovine TB. There are however other circumstances where as a matter of last resort a culling may be required for other reasons.

3.16 If a cull was proposed it would have to be undertaken in accordance with the Badger Act 1992 and/or the prevailing UK legislation at the time the application is made. Article 7 of The Bern Convention requires each contracting party to take appropriate and necessary legislative and administrative measures to ensure the protection of certain wild fauna species including the Eurasian Badger (*Meles meles*). Any exploitation is to be regulated, as achieved by The Protection of Badgers Act 1992. Article 2 of the Bern Convention states that requisite measures shall be taken by the contracting parties to maintain the population of fauna, while taking into account economic requirements.

3.17 The NFU are keen to represent members and is currently trying to establish the effect TB is having on members in the local area. As far as we are aware there is no current proposal to progress an 'umbrella' licence to cull. On a national level the NFU is pressing Government to advise on its disease control policy in relation to TB which remains unclear.

3.18 Clearly a ban on any badger cull will benefit badgers but consideration also needs to be given to the health and well being of farm livestock (which would become subject to a statutory cull) and other wild mammals which are susceptible to TB.

3.19 The council has a wider responsibility as land owner and local authority to act in the best interests of public safety when maintaining its own property and engineering structures in addition to considering carefully Government proposals and current and future policy to control the spread of Bovine TB. This

may require the council to act in unison with other land owners if the control of Bovine TB is to be addressed on a geographical basis that extends beyond the councils land ownership interests.

- 3.20 Clearly the council would not support a cull on badgers which is not undertaken in accordance with current legislation. There is no reason to suggest that current procedures are in any way inadequate or fail to take into account all appropriate and relevant circumstances. Natural England is recognised as have the expertise to interpret and administer the statutory controls. The council does not have superior expertise to justify a departure from the current policy.

4. CONSULTATION

- 4.1 This report has been prepared with the assistance of our agricultural agents, Smiths Gore, who are responsible for the management of the council's farmland estate following consultation with relevant parties.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The council receives approximately £0.5m annually from agricultural estates income. The ability of our tenant to their rental obligation is influenced by factors such as the health of their livestock and in turn their ability to farm. Rental income could therefore be affected but to what extent is impossible to quantify at this time.

Finance Officer Consulted: Stuart Taylor Date: 05/06/08

Legal Implications:

- 5.2 General legal implications are contained in the body of the report but with regard to the possibility of the council seeking to impose or negotiate a ban with its tenant farmers it could run the risk of exposing itself to a claim if the absence of a cull resulted in a loss to a tenant.

Lawyer Consulted: Anna MacKenzie Date: 04/06/08

Equalities Implications:

- 5.3 An Equalities Impact Assessment is not relevant for this report

Sustainability Implications:

- 5.4 Any action taken to cull badgers would be undertaken in accordance with the Protection of Badgers Act 1992

Crime & Disorder Implications:

- 5.5 There are no crime & disorder implications

Risk and Opportunity Management Implications:

- 5.6 Were the council to follow a policy outside the existing statutory controls there is a small risk that the safety of the public and the welfare of farm livestock is put at risk.

Corporate / Citywide Implications:

- 5.7 By retaining the flexibility to allow the council to deal with circumstances where badgers are putting public health and safety at risk the council can ensure it fulfils its responsibility in this regard.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Consideration has been given to the introduction of a blanket ban. It has not been recommended for the reasons discussed in the body of this report
- 6.2 If the council were to introduce a ban on licensed culls the council may expose themselves to compensation claims from tenants (in addition to a reduction in rental income) and third parties arising from damage to property and livestock, loss of earnings and increased costs associated with disease control measures. This would be in addition to the council's own costs associated with maintaining roads, engineering structures etc.
- 6.3 If there is a ban there is some risk, however small, that action may be taken without obtaining a licence from Natural England. This would be an unlawful activity and one that the council would have to rely on the police to enforce.
- 6.4 Finally a blanket ban would be difficult and potentially costly to introduce within the structure of the existing leases and could only be carried out by negotiation and agreement with the individual farm tenants.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 Clearly there are competing interests between farming and animal welfare for badgers and cattle, public safety, maintenance of engineering structures and conservation grazing. The council has a responsibility as landlord and local authority across all of these issues. As a result it would be unwise to restrict the current flexibility available to the council to address problems associated with badgers on a case by case basis.
- 7.2 A licensed cull is an option of last resort and is only carried out in extreme and limited circumstances in accordance with the existing statutory controls, rigidly enforced by Natural England who are recognised as experts on such matters.

SUPPORTING DOCUMENTATION

Appendices:

1. Under Section 10 (2)(3) of the Protection of Badgers Act 1992, Natural England, under powers conferred by the Secretary of State, has authority to issue licences for the following purpose:-

1. To interfere with badger setts for the following purposes:-

- prevent serious damage to land, crops, poultry or other forms of property.
- any agricultural or forestry operation.
- any operation to maintain or improve any existing water course or drainage works or to construct new works required for the drainage of land including works and defence against sea or tidal water.
- preventing the spread of disease.
- controlling foxes in order to protect livestock and penal game.

2. To kill or take badgers for the following purposes:-

- preventing the spread of disease.
- preventing serious damage to crops, land, poultry or other form of property (e.g. house, garden, road, flood defences, historical monuments, etc).

Natural England only issue licences where it has been demonstrated that the following three tests are satisfied:-

- i). A licence is required. (e.g. the badgers or their setts are causing or are likely to cause a serious problem or are preventing legitimate operations).
- ii). There is no alternative to issuing a licence (e.g. other methods of managing the problem or carrying out the operation have been shown to be ineffective or impractical and not just difficult to implement).
- iii). The activity to be licensed is likely to resolve or contribute to resolve the matters for which it has been issued.

2. Extract from Hansard - House of Commons 10th March 2008 Column 1371

Referring to the House of Commons EFRA Committee report:-

“TB is a menace to cattle and badgers alike and continues to spread unabated. Figures published this week show that the number of fresh outbreaks of TB in cattle reached a new record for modern times of 4,137 in 2007. The incidence of TB—that is, the proportion of herds tested resulting in a breakdown—increased by 18 per cent on the previous year. Some 28,000-plus cattle were slaughtered as TB reactors, inconclusive reactors or dangerous contacts, and 6,532 farms were under TB restrictions in 2007 because of a TB incident. That TB outbreak

is costing taxpayers more than £90 million, let alone the heartbreak to the farmers concerned.

A recent independent report published by the Royal Society suggested that 75 per cent of new TB outbreaks were caused by local effects in high-risk areas, the most significant of which is contact between badgers and cattle. Controls of the spread of TB by cattle movements have an important part to play, but TB will never be brought under control without tackling the reservoir of the disease in the badger population. The report highlights that the disease is now effectively out of control. Clearly something needs to be done urgently.

The Royal Society report recognised the need for a multifaceted approach to the problem. Vaccination, effective biosecurity arrangements at farm level, increased frequency of testing and a greater use of gamma interferon are recommended. The Independent Scientific Group (ISG) report of 2007 acknowledged that the removal of infected badgers can have a beneficial effect on the instances of TB in cattle in parts of the country where there is a high incidence. The Minister will be well aware of the concerns expressed by dairy and beef farmers in the hot-spot areas, particularly those in the south and south-west.”

3. The House of Commons Environment, Food and Rural Affairs (EFRA) Committee

The House of Commons EFRA Committee published its report into bovine TB in February 2008. The report, which was unanimous, contains a number of important recommendations to livestock farmers and stresses the need for a comprehensive set of measures. Defra ministers have used the pending EFRA report as an excuse to delay a decision on future TB control measures. As a result the National Farmers Union (NFU) are now urging the government to come to an early decision on future control measures.

The report states bluntly that the government’s current method of controlling cattle TB is not working effectively and that the “*government must show its commitment to finding a way to ease the grip that cattle TB has on the country. To do this, its policy must be to reverse in the short term the rising level of incidence of the disease with a long-term goal of eradication through the use of vaccines.*” The NFU for obvious reasons fully endorses these comments.

4. The Royal Society Report

The Royal Society is an independent scientific academy dedicated to promoting excellence in science. The Society plays an influential role in national and international science policy and supports development in science, engineering and technology in a wide range of ways.

The Royal Society on the 4th April 2008 warned the Government that it would have to make a decision on badger culling without the benefit of strong scientific evidence.

In its response to the government consultation on controlling the spread of bovine tuberculosis, the Society recognises that despite the best efforts of the scientific community and Defra, the scientific evidence based on the spread of TB is limited; and is an issue which needs to be acknowledged in deciding how to respond to the spread of bovine TB.

Professor David Read, Vice-President of the Royal Society, said, *“The case for badger culling is not clear cut. The introduction of culling could result in an increase or decrease of bovine TB. Which of these will predominate is likely to depend upon the details of the culling regime adopted.”*

In response, Defra’s secretary, Hilary Benn said the contents of the report would be subject to his four tests:-

- Any potential policy on badger controls would have to take into account whether it could be expected to have a significant impact on the disease;
- Whether it is supported by the available scientific evidence;
- Whether it could practically be delivered;
- Consideration of public acceptability.

Since the publication of this report, the Welsh Assembly announced plans to pursue vigorously a programme of TB eradication in Wales backed by £27 million worth of funding over three years.

Bovine TB has been a particular issue in Wales and incidents of TB has increased dramatically over the past decade with 7,905 cattle slaughtered in Wales because of the disease in 2007 compared to less than 700 in 1997. The cost of compensation in Wales has risen from £1.8 million in 2000/01 financial year to £15.2 million in 2007/08. On present trends, by 2012 it could exceed £30 million per annum. (Figures from Welsh Assembly Press Release).

5. Oral Ministerial Statement by Hilary Benn on Bovine TB - 7 July 2008

Mr Speaker, I wish to make a statement about the Government’s plans for tackling bovine TB in England. In doing so I would like to thank the EFRA Select Committee both for their comprehensive and thoughtful report, and for allowing me additional time to respond to it, which I have now done. I am also grateful to Professor Bourne and the members of the Independent Scientific Group for their thorough scientific study.

Bovine TB is not a new problem. For over 70 years successive governments have implemented cattle controls based on surveillance, testing and slaughter of reactors. These have been designed to protect public health, reduce the economic impact of

the disease on farmers, and, more recently, to comply with our obligations under European legislation.

By the mid 1970s the incidence of TB in cattle had reached an all time low. However, since the 1980s disease incidence has increased again – with a significant rise following the 2001 foot and mouth epidemic - and last year nearly 3,200 new TB incidents were recorded and 18,543 reactor cattle slaughtered in England.

Bovine TB is a serious problem, particularly in the South West and the Midlands. And although over 90% of herds are TB free at any one time and some significant cattle farming areas are largely without the disease, I know from listening to farmers living with it just how difficult it is, and for those most seriously affected, the economic and human consequences are simply devastating. That is why we should take the right decisions to help.

Bovine TB is transmitted between cattle, and between cattle and badgers. But what has dominated debate is whether badger culling could be effective in controlling the disease. The ten year Randomised Badger Culling Trial, overseen by the Independent Scientific Group on Cattle TB (ISG), culled some 11,000 badgers to discover what impact it would have.

The ISG's final report, published last year, concluded that reactive culling – killing badgers in areas where there had been local TB breakdowns - made the problem worse, and that proactive culling – taking an area of about 100 square kilometres and repeatedly culling badgers over a number of years - only produced marginal benefits because although TB was reduced in the area, it increased outside because of the disturbance and movement of badgers.

While scientists agree that a prolonged and effective cull over even larger areas – some 250 to 300 square kilometres - could reduce the incidence of bovine TB, the ISG's judgement was that the practicality and cost of delivering a cull on this scale meant that “badger culling cannot meaningfully contribute to the future control of cattle TB”.

Having listened carefully to a wide range of views from scientists, farming, veterinary and wildlife organisations, and many others, and having considered all the evidence, I have decided that while such a cull might work, it might also not work. It could end up making the disease worse if it was not sustained over time or delivered effectively, and public opposition, including the unwillingness of some landowners to take part, would render this more difficult.

I do not think it would be right to take this risk. Therefore – and in line with the advice I have received from the Independent Scientific Group – our policy will be **not** to issue any licences to farmers to cull badgers for TB control, although we remain open to the possibility of revisiting this policy under exceptional circumstances, or if new scientific evidence were to become available.

This has been a very difficult decision to take, and I know that farmers affected will be disappointed and angry. We all want the same thing – to beat this terrible disease – but I have had to reach a view about what will be effective in doing so, guided by the science and the practicality of delivering a cull.

And having made a commitment to farmers and others that I would take a decision, now that it has been made, we need to put all our efforts into working together to take action that can work in all affected areas.

I have therefore also decided to make vaccination a priority as recommended by the Select Committee. Effective vaccines could in future provide a viable way of tackling disease in both badgers and cattle.

We have invested £18 million in the last 10 years in vaccine development, which has delivered good results, including: evidence that vaccinating young calves is effective; making progress towards developing a test to differentiate infected from vaccinated cattle; showing that injectable BCG can protect badgers; and developing oral badger vaccine baits.

I now intend to increase significantly our spending on vaccines by putting £20 million into this over the next three years to strengthen our chances of successfully developing them. I will also provide additional funding to set up and run a practical project to prepare for deploying vaccines in the future.

It could be some time before an oral vaccine for badgers, or a cattle vaccine, becomes available, so for now we must reduce the spread of the disease, and try to stop it becoming established in new areas. We have cattle controls in place to tackle TB and have strengthened them in recent years with the introduction of pre-movement testing and the targeted use of the more sensitive gamma interferon test. But the action that individual farmers take, in particular to deal with the risk of importing disease into their herd, will also remain critical.

Disease control is not just a matter for Government, notwithstanding the considerable cost. Farmers have the main interest - the burden of controls falls most heavily on them - and they must be involved in working out how we go forward. It would be possible to tighten cattle measures still further - as recommended by the ISG Report - but this would come at a high cost, and whether it would be worthwhile is as much, if not more, a question for the industry as it is for Government. There is a choice to be made.

That is why I have also decided to set up a Bovine TB Partnership Group with the industry to develop a joint plan for tackling bovine TB. We will discuss with the industry who should be on the group and how it should work, and I want to get started as quickly as possible.

The group will have full access to information on the TB budget and will be able to make recommendations about its use. It will be able to propose further practical steps to tackle the disease, including, for example, whether there should be tighter cattle controls. It will help to reach decisions about the injectable vaccines deployment project.

And it will be able to look at ways of helping farmers to manage the impact of living under disease restrictions, for example by providing incentives for biosecurity, or maximising the opportunities to market their cattle by looking again at the restrictions around red markets and encouraging the establishment of more Exempt and

Approved Finishing Units. I am prepared to make additional funding available to support such initiatives if the Group makes a strong case for doing so.

Mr Speaker, the House is united in its determination to overcome bovine TB, and much as we would all wish it, there is no quick or easy way of doing so.

But our best chance is to work together, and I therefore hope that the industry will respond to the proposals I have made so that we can get on with it.

Documents In Members' Rooms

1. None

Background Documents

1. None