

**Documents for Consideration by BCA's
Conservation & Access Committee
Meeting on 16 August 2014**

Volume 2: Last-Minute Submissions

Please note that the reports are written by individuals and the opinions expressed are, therefore, not necessarily those of BCA.

Submission from Duncan Jones

I feel I have to email you as an individual to put forward my views on CRoW access. I'm not a DIM of the BCA, although I am a member of two northern clubs; BRCC and RRCPC. One is a full member of CNCC and one not. I feel I should at least present some views as an active caver, as most clubs will likely ask their committee rather than the full membership – a minority view in my opinion. And I apologise for this being a northern slant, I'm most familiar with that area.

I'll try to keep my few points as brief as practicably possible:

Walkers are afforded access across CRoW land and can venture in to a cave without question – there is no specific prohibition or exclusion to suggest otherwise. In fact, I recall seeing no signs suggesting I was leaving CRoW land when I entered any cave on such land. The mere fact walkers armed with a hand torch can venture as far as they please suggests a serious discrepancy, as does cavers being able to walk to and descend any open hole – quite where the definition of open hole/land/air turns to cave is no doubt a mystery. About 15+ years ago I wandered around with a hand torch and entered a few caves, completely

oblivious to any controls – this apparent freedom (before CRoW) is what brought me in to the world of caving, I'd like to think future generations would have the same chances. Too much control can be detrimental, people take on outdoor activities to escape the trappings of modern life, not to be bound by bureaucracy. Embrace the freedom and give caving a chance to survive.

The application of permits serves no real purpose, it certainly does not conserve a cave. SSSI caves or caves under such land have been accessed without impediment for years. Pirating (or exercising an assumed right to roam), at least to some, is happening and will continue. This would suggest most permit based cave systems would not see an increase in caver-numbers and CRoW access would not be any more detrimental to the caves than the current systems. In fact it may open up caves previously restricted to some and perhaps

spread the visitor-load, or it may have the benefit of a reduction in rescues – people with a permit might be more inclined to take a chance with the weather, whereas CRoW access would give cavers far greater choice in inclement weather.

If there was concern about a certain cave, i.e. easy access to public or the need to restrict access to just genuine cavers then the application of a "Derbyshire key" system would certainly alleviate some issues.

CRoW has a form of liability reduction, I'm sure this would apply to cavers accessing caves and thus give landowners less concern about liability. As it stands a permit system puts an onus of liability on the landowner. I'm not sure how this would apply to digs but we have our own insurance which would back up the reduced liability.

If caves were considered dangerous they would have been omitted from mapping. A few minor examples like Eldon and Marble Steps have been, purely because mapping shows them as an enclosure (not strictly true with Marble Steps – an obvious error in mapping). If caves, read natural features, were considered dangerous then the likes of Gaping Gill, Rowten Pot, Malham Cove and other select natural features across the Dales would have been omitted from the maps – but they have not.

There is no specific exclusion of caving in the act, had the idea of unrestricted caving access been so abhorrent it would have been excluded. The mere fact that it wasn't suggests the act is open to

interpretation. Therefore I believe in the spirit of the act, to promote better access for outdoor users, that caving should be considered an acceptable activity to undertake.

I don't have any issue with the CNCC/NE and the work that has been achieved (Elgins being the most recent work, fencing if I'm not mistaken – fine effort). There's no reason why good relations can't continue like this with landowners. CNCC/NE actually make life easier for landowners, maintaining and erecting fences etc. CRoW access would not remove the need for dialogue/interaction with landowners. Landowners would in theory have less burden from cavers, not having to discuss matters of piracy or numbers of permits etc which must surely be a good thing.

As a final note, I'm not for completely unrestricted access – there may be very special cases where restrictions might be applied – this is for the better educated to decide. Generally though, most sites should remain unrestricted, as they are now.

Duncan Jones

Further Submission from Bob Mehew

Comments on the Alternative View

I wish to address four points made in this document which are plainly in error.

The first relates to what NCA submitted at the time of the consultation process on CRoW in 1998. The written archives of NCA held at the British Caving Library were fully researched and the submission recovered. That document is as J Potts has republished, save that the original did not provide the details of the questions and proposals. That the document was submitted is confirmed by contemporaneous records, notably the Bristol Exploration Club's Belfry Bulletin Issue 499 in 1998. The submission clearly expresses a view that cavers wished for CRoW to cover caving not only across the surface but also underground. A note issued by DETR around the time they issued their analysis of responses indicates that NCA did make a submission. The written records of NCA's meetings subsequent to March 1998 give no indication that persons were briefing against this view.

Secondly the document makes erroneous claims about the mapping process. CRoW calls for land of a type to be known as 'access land' to be identified. That type of land is based on a range of characteristics, some of which are surface features (mountain, moor, heath or down) but the others are not (height above sea level; nature of usage, otherwise known as common land or land dedicated by the land owner). That process was not about identifying specific types of land such as that suitable for picnics or kite flying, activities announced in parliamentary debates as being permissible under the right of access. Indeed the act was built on a foundation of not specifying what activities were included, rather to specify by prohibition what activities were not included in Schedule 2, see column 883 of the second reading debate on the Countryside and Rights of Way Bill in the House of Lords Debate on 27 September 2000 at <http://hansard.millbanksystems.com/lords/2000/sep/27/countryside-and-rights-of-way-bill-1> .

Once so identified access land was to be recorded on a map. The document is surprisingly unaware of the legal definition of land and the means by which this is recorded in law. The Supreme Court judgement of 2010 see reaffirmed the legal principle that land meant not only that on the surface but also that below the surface, see http://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0032_Judgment.pdf. The process of simply shading an area of land to signify this has been accepted through the ages, as is well demonstrated in the document which scheduled the Bone Caves in Scotland, see http://data.historic-scotland.gov.uk/pls/html/db/ESCHEDULE.P_ESCHEDULE_DOWNLOADFILE?p_file=606. A subsidiary comment that there are problems with mapping a cave are completely without foundation and ignore not only over 50 years of developments in cave surveying but also centuries of experience in mine surveying.

The document claims that the act does not make provision for conservation of caves. In this it ignores Section 26 of CRoW which clearly provides a mechanism for incorporating the existing means of access control into law. It also ignore Section 2(3) which excludes from the right of access those places which have prohibitions on access under other law. A subsidiary comment about the Hobhouse report shows a failure to have even read the 1949 National Parks and Access to the Countryside Act which at Section 60(3) provides for restrictions to be included in access agreements or orders which could easily address such concerns as conservation.

The document also makes a specific claim that the exclusion of two cave entrances was reflecting parliamentary intent that caving was not included. One example of Marble Steps was almost certainly excluded because it is in a wood, a type of land which was excluded from the definition of access land. The other example of Eldon Hole which is shown as a steep sided hole and possibly mistaken as a disused quarry. Interestingly the map also shows Gaping Gill, a shaft of some 100 metre depth which was included within access land.

Bob Mehew
15 August 2014

Submission from Cambrian Caving Council

CCC used our newsletter and email to ask our member caving clubs and organisations and individual cavers to state their position in the conservation-access debate. This flows from the decision at the 2014 BCA AGM to call a meeting of its C&A sub-committee concerning cave access and the scope of the CRoW Act, and us wishing to provide this committee with representative feedback from participants in Wales. No individuals responded to our request for opinions, but the small number of clubs that have engaged in this exercise have all done a thorough job in trying to consult their members in one way or another. The information we did receive is listed on the pages below in alphabetical order of club name.

Running in parallel with the above exercise was a group of BCA members seeking a legal opinion from an expertly-qualified London QC, the outcome of which is broadly positive in terms of the applicability of the CRoW Act to cave access, but it has only recently been put into circulation and is still receiving the considerable attention of cavers.

Cambrian has recently co-opted a new Registrar to run the Cambrian Cave Registry. This new officer has, within the limited time available and at very short notice, categorised the entries on the database by region of Wales in terms of the way the access is organised. Some of the database records have not been checked or altered in 30 years by any of his predecessors in post, so the result shown below is provisional, but nevertheless it gives a strong indication of the impact that CRoW access rights imply for caving.

Region of Wales	De Facto Open	CroW Land	Ask The Landowner	Access Body Controlled	Total Sites	%CRoW
Western Beacons	36	311	7	3	357	87
Central Beacons	187	153	118	3	461	33
Eastern Beacons	167	209	8	6	390	54
North Wales	114	6	33	15	168	4
Gower	135	0	13	3	151	0
West Wales	105	0	50	2	157	0
South East Wales	73	0	12	3	88	0
Mid Wales	8	0	16	0	24	0
TOTAL for Wales	825	679	257	34	1795	38
TOTAL for Beacons	390	673	133	12	1208	56

The 'De Facto Open' caves are those such as Porth-yr-Ogof where no permission is needed and access is unconditional by tradition. The 'Ask The Landowner' caves are those where permission should be sought, typically from a farmer, such as Ogof Fawr. The 'Access Body

Controlled' caves are such as OFD1 and Ogof Capel. The 'CRoW Land' set is all the caves that are on CRoW Access Land irrespective of whether the tradition there might be to ask a landowner, or get a key/permit from an access group, or simply to access the site informally and unconditionally. 'Total Sites' is the sum of these four mutually exclusive classes.

From this we see that Mynydd Du (i.e. the Carmarthenshire Black Mountain area) has the highest percentage of CRoW sites at 87%, while the Brecon Beacons National Park as a whole has 56% of the sites listed in the cave registry being on CRoW Access Land. Some notable and significant cave entrances are on CRoW Access Land: for example Agen Allwedd, OFD2, Drws Cefn (i.e. the Ogof Draenen No.3 entrance), Tunnel Top Entrance.

In a meeting I had this week with NRW, they were not able to give any definitive guidance on CRoW and caving. They also said it would be a difficult and long process to get NRW to settle on a clear interpretation given the size and complexity of this new organisation.

Stuart France
CCC Conservation/Access Officer

RESPONSE FROM CHELSEA SPELAEOLOGICAL SOCIETY

We discussed caving on CRoW Access Land at our AGM in January 2014. This meeting was attended by 24 members out of about 100 in total. A motion that "CSS wishes to see the maximum possible level of legal access to underground spaces under CRoW Access Land irrespective of land ownership" was carried unanimously.

Land ownership was mentioned because there had been some talk of the then Cambrian Caving Council officers lobbying the Welsh Government ministers to develop the CROW Act wording so as to create more explicit access rights only on government and utilities land in Wales – and not on any privately owned land, such as Mynydd Llangattock.

The date of our 2014 AGM was before the Welsh Government explained its reasons for the never-ending delays in their Countryside Access Green Paper being published, and they have since decided to postpone the discussion and any legislative changes until after the next elections "due to lack of time". Our AGM was also before the QC Opinion on CRoW was commissioned let alone appeared in print. However, our club's wish to acquire as many legal access rights as possible to go caving still stands and it applies as much to the current political landscape as it did back in January.

Stuart France
Secretary, CSS
11 August 2014

RESPONSE FROM FODCCAG

Background

The Forest of Dean is almost entirely located in England and although a part of the Cambrian region for the purpose of caving administration the Forest of Dean Cave Conservation and Access Group (FoDCCAG) is recognised within the Forest of Dean as the body which administers caving and mine exploration in the area.

As CROW excludes forests there is no statutory access land in the Forest of Dean but the main landowner is The Forestry Commission and it has dedicated much of the land it owns.

A large part of the Forest of Dean is within the Hundred of St Briavels and within that area the mineral rights are severed from the land and belong to the Crown.

The local situation

There are 116 cave and 55 mine sites in the Royal Forest of Dean. Of these, 46 cave and 29 mine sites are on land owned by the Forestry Commission which has been dedicated as permissive access land. 8 of these caves are gated, all of the mines are either gated or within locked compounds. By agreement with the Forestry Commission access to all of those sites is controlled by FoDCCAG on behalf of the caving community.

38 cave and 28 mine sites on FC land are within the Hundred of St Briavels. Because the mineral rights vest in the Crown underground access is controlled by FoDCCAG on behalf of the caving community by agreement with the Crown's agent, the Deputy Gaveler.

Arising from these agreements we are provided with keys to the Forestry Commission gates and cavers are allowed to park on forestry roads outside the normally designated areas.

Our arrangement gives cavers 100% access to all sites, including those in compounds gated in accordance with by-laws, with a minimum of bureaucracy.

The position of FoDCCAG regarding the Forest of Dean & CROW

Forestry Commission by-law no 648 of 1982 prohibits entry to any mine on their land.

Because of the complex local situation and the interaction of CROW with the mineral rights of the Crown it is our opinion, and the opinion of the Deputy Gaveler, that whatever the national situation, any rights of access to caves granted under CROW cannot apply in the Forest of Dean.

If CROW does over-ride the Crown mineral rights and allow access then we are satisfied that the access restrictions imposed by the Forestry Commission are within their rights under Section 26.

Through the FoDCCAG agreements with the Forestry Commission and the Crown access to all sites in the Forest of Dean already exists at a level which exceeds CROW as that legislation only provides for access on foot.

We see no reason to take any action which may disturb the existing arrangements and hope that all cavers will respect this.

Robin Weare (on behalf of FoDCCAG)
11 August 2014

RESPONSE FROM GRWP OGOFEYDD GARIMPEIROS

I have canvassed all our membership and I can confirm that we are unanimously in favour of caving being included under CROW along with all the benefits that this implies. I trust you will be acting in the interests of all cavers at the upcoming BCA meeting this weekend.

Nigel Rogers
Secretary, Grwp Ogofeydd Garimpeiros
13 August 2014

RESPONSE FROM HADES CAVING CLUB

Hades Caving Club has 82 members who regularly visit caves in all parts of England and Wales. A draft of this response has been circulated to all members. There have been no dissenting comments.

We believe that landowners who voluntarily allow access to caves on their land should be thanked and supported.

We are content to comply with the requirements of all access agreements and are satisfied that in all parts of England and Wales where access arrangements exist it is to the advantage of future cavers that current cavers take no action which may antagonise landowners.

We understand that Counsel's opinion has been obtained by individual cavers, published widely and forwarded to Natural England. We also understand that a critique of that opinion has been obtained by different individual cavers, published widely and forwarded to Natural England.

We would hope that both of these documents will be shared with Natural Resources Wales and any other relevant authorities in Wales and that Cambrian Caving Council will ask local cavers to behave responsibly whilst the matter is properly considered by those authorities.

We are particularly concerned that vulnerable sites should be protected and that the general public should be protected from sites a non caver would find dangerous.

For this reason we favour appropriate gating of sites and we favour warden control of visits to some sites. We accept that there will be differing views as to whether gating or warden control is appropriate. In this respect we are content to rely upon and comply with the responsible decisions of local cavers.

Charles Russell-Johnson
Secretary, Hades Caving Club
9 August 2014

RESPONSE FROM MORGANNWG CAVING CLUB

The Cambrian Caving Council Newsletter for July requests opinions from clubs concerning CRoW and a possible change to its interpretation with respect to caving, so that they might be presented at a BCA meeting in August.

The question has been discussed (and is still being discussed) within our club meetings and circulated to members for e-mail input. The discussion recognised that increased access to CRoW land in England and Wales (though here, because of the specific request, considering access in Wales) would, if it became a legal right, bring with it much responsibility for cavers. Any such change should be heavily accompanied with 'education', both among cavers and landowners, and cavers should not take any route of confrontation with landowners along the lines of 'we have the right, so get lost'.

If a change in interpretation of the law occurs, landowners would still retain the power to control many factors relating to the land that they own, and they should be respected. Confrontation would only lead to a diminishment of their regard for the sport and, possibly, reduced consents for digging or, indeed, a blanket ban on surface or underground digs. It

would be important to continue (or begin) to offer help to landowners and tenant farmers to, for example, maintain parking areas (that may only exist by concession or agreement), stiles and footpaths. Cooperation and Education should be keywords.

In addition, maintaining conservation for underground features is imperative (the latter taken broadly to include not only formations and sediments, but also acknowledging that other features may not be recognised as important to today's science, whereas tomorrow's might be different), and the club feels that controlling access via gates or a leader system has formed a valuable part of this protection to the present day. The manner in which this would change should be closely studied.

However, the club feels that access to caves on CRoW land for sport caving by right is a principle that should be pursued, but only alongside due consideration of the above comments (particularly concerning conservation and respect for and cooperation with landowners), and that this conclusion should not be quoted as a simple statement without including the other discussion points.

Judith Calford
Hon. Secretary Morgannwg CC
2 August 2014

FIRST RESPONSE FROM RFDCC

Robin [Weare] will be presenting FoDCAGG's view on the situation in the Forest of Dean and I have been asked by the RFDCC Committee to brief you on the independent view of the RFDCC regarding caving on open access land in England and in Wales. Their view is as follows:

"We wish the national caving bodies (BCA and Cambrian) to do all they can to convince the relevant authorities that the CRoW Act does in fact apply to access for caving, without any proviso's or caveats. Once this basic right is established then local caving bodies can look at their particular circumstances and resolve any issues such as safety, insurance etc should they arise. Hopefully land owners will be content to take advantage of the reduction in their liabilities under CRoW and be less concerned about such matters. In the meantime, it is in everyone's interest that all cavers should continue to comply with existing access arrangements until the CRoW principle is finally sorted out and any possible local complications have been considered."

Could you please include the RFDCC view in the discussions during your meeting on the 16th.

David Dickson
Royal Forest of Dean CC

SECOND RESPONSE FROM RFDCC

Dear Andrew Hinde (Convener BCA Conservation and Access Committee)

I understand that Robin Weare has recently sent you a statement from FODCCAG with regards to caving on CROW land, and will be attending the forthcoming meeting representing that view.

While I do not wish to suggest in any way that this was not the view that was agreed on in

a recent FODCCAG meeting, that I was unfortunately unable to attend, I would like to point out after discussing the matter with RFDCC members and committee that it is not the majority view of cavers in the Forest of Dean.

If I understand correctly, the basic question under discussion is should the BCA go ahead and try to gain access for caving on CROW land, which for most cavers I have spoken to appear to have a clear opinion that cavers should have this basic right of access the same as is granted walkers and climbers.

Whilst it is probably the case that other legislation in much of the Forest is likely to over ride CROW, we do have some locations outside these bounds, such as Miss Graces Lane Cave that are on designated land. However as local cavers, who also enjoy caving in other parts of the country, we don't feel that our particular local peculiarities should alter the basic point under investigation, which is that cavers generally would like to have caving access under CROW.

To this end the RFDCC committee has agreed on an official statement which we have sent to Stuart France to represent at the meeting as the Cambrian representative., which is as follows.

"We (RFDCC) wish the national caving bodies (BCA and Cambrian) to do all they can to convince the relevant authorities that the CRoW Act does in fact apply to access for caving, without any proviso's or caveats. Once this basic right is established then local caving bodies can look at their particular circumstances and resolve any issues such as safety, insurance etc should they arise. Hopefully land owners will be content to take advantage of the reduction in their liabilities under CRoW and be less concerned about such matters. In the meantime, it is in everyone's interest that all cavers should continue to comply with existing access arrangements until the CRoW principle is finally sorted out and any possible local complications have been considered."

Jan Karvik
Chairman, The Royal Forest Of Dean Caving Club

RESPONSE FROM WEALDEN CAVE AND MINE SOCIETY

I have canvassed for opinion within WCMS on the CRoW issue.

I have asked whether our members would be happier seeing caving recognised as an activity permitted on Open Access Land, or whether they would like to see the status quo remain in place.

From the replies I have received, we have to conclude that WCMS taken as a whole does not have a majority view one way or the other, although a few of the views expressed at an individual level were clearly strongly held.

It would not be fair on our membership to indicate a club preference one way or the other, or to provide very specific concerns as these are held at an individual level and cannot be considered the view of the society as a whole.

Only in one particular area was a concern raised by members on both sides of the debate, that caves of great value from a conservation point of view, currently protected by access restrictions, must retain the necessary restrictions to continue the protection they deserve.

Peter Burgess
Wealden Cave and Mine Society

RESPONSE FROM WIRRAL CAVING CLUB

The following is a statement on the position of the Wirral Caving Group with regard to the current debate on whether the CRoW act should permit caving on access land.

I have circulated a short document to the 14 members of the Wirral Caving Group which outlined the current discussions which have taken place regarding the CRoW act and Caving. I pointed out the QC's opinion that CRoW does include caving subject to some interpretation of 'Open Air'. I also noted that there was another opinion which argued against this case. Of the 14 members, 11 actually replied to me either by email or verbally. Their view was that CRoW should permit caving on access land and I am of the opinion that the other 3 (who failed to reply in time) would also concur.

It seems illogical that we can go walking or climbing on access land and yet are denied the ability to go caving. We feel the BCA needs to firmly back the idea of caving under CRoW and push Natural England and Natural Resources Wales to accept that this is the case. It would be extremely helpful if the government could be persuaded to formally accept this by an amendment to the CRoW act, but we feel that is unlikely given the election in 2015.

We appreciate that there are concerns about conservation of sensitive sites (both from a scientific and aesthetic point of view) but feel that there are existing ways which can be used to deal with this. Any restrictions must be well documented and access should be available on a non-discriminatory basis.

Dave Tyson
Secretary