

Report to BCA AGM June 2018

This should be my last report as BCA CRoW Liason Officer as I pass on the baton after three difficult years in the job. The co-opted position is a significant role in BCA, effectively running the BCA campaign to ensure the Countryside and Rights of Way Act applies to caving. There can be no doubt this is the direction the membership want BCA to take after both a poll and ballot on constitutional change were in favour by a large majority.

Looking back over the last three years we [the BCA] have achieved much with just a small group of contacts and confidants. We have gained considerable support for the BCA position with other organisations and influential individuals who find it in their nature to recognise the freedoms we seek and are keen to offer help. We have made our case clearly, beyond our own caving bubble, through mainstream media channels and elsewhere which has put the entrenched authorities under pressure.

We have now arrived at a stalemate where the CRoW Act can easily be argued that it already applies to caving, we just need the will from the authorities to accept that position. There is certainly no need at present to seek a change in the law. However with an entrenched view prevailing at DEFRA/NE we must look for opportunities where change can be made and continue to lobby for that change. There are opportunities ahead which are sure to come from the BREXIT fiasco and a Natural England in its death throws which surely indicates the establishment of a new statutory body. I'm sure my successor will be well placed to take those opportunities.

I am pleased to see that democracy has prevailed at the BCA although it has taken a rather long time. If we look back to the position taken by the BCA before the CRoW 'debate' gathered momentum we can see what a stark contrast it is compared to the position which has been democratically arrived at and before this AGM. I include them both in my report.

The first was drawn up by the then BCA Legal Officer and although never approved by council it was publicised in Descent magazine and on the BCA's website. Dressed up as such, it was taken by some to be official BCA policy and used by landowners in at least one major access dispute.

CAVE and LAND OWNERSHIP, ACCESS and the LAW

I have been asked to make a clear statement concerning the law in relation to land ownership and access to caves in England and Wales.

1. LAND OWNERSHIP

The law here is very clear and has not changed for many centuries. Landowners own the surface of the land and all that is below it to the centre of the earth.

2. MINERALS RIGHTS

These are not general rights, but as with land ownership, they must be specific and written down in legally binding documents. They only apply to specifically named minerals, e.g. metallic ores, or coal deposits, and absolutely not to caves, (since these are merely air or water filled cavities).

3. COUNTRYSIDE and RIGHTS of WAY ACT 2000 (CRoW)

This was a major Act of the UK parliament which received Royal Assent in December 1999. It came into effect progressively (largely through secondary legislation, known as statutory instruments, that it specifically enabled) from the year 2000 up until 2008.

Prior to this the Act had been loudly heralded as "Right to Roam Legislation", something that has been very misleading to the general public, especially city dwellers.

On areas of land above 600 metres above O.D. and on lower land that has been very carefully agreed and mapped, now depicted upon 1:25,000 scale Ordnance Survey maps, and known as Access Land there is a right to roam. However, even this right can be removed or restricted in specific circumstances for fixed periods of time, e.g. lambing, high risk of fire, etc.

Whilst CRoW does (with limitations) give access to rock faces, (they are regarded as land that just happens to be vertical rather than horizontal), it absolutely does not give legal access to caves, potholes or abandoned mines.

NCA (now BCA), together with BCRA and NAMHO, were all consulted during the drafting of CRoW and its associated statutory instruments (1998-2005) and fully agreed and accepted the CRoW proposals. Think about it, free access to caves and potholes would be quite inoperable (and dangerous) in many situations including popular sites such as Lancaster Hole, Gaping Gill, Ogof Fynnon Ddu, Swildons Hole, etc.

The law in England and Wales is thus absolutely clear, access to caves and disused mines is entirely at the discretion of the landowner and/or occupier (e.g. the farmer).

4. THE LAND REFORM (SCOTLAND) ACT 2003

Confusion might have arisen in some cavers' minds because in 2003 the above Act made major changes to the laws governing Scotland. Broadly, this Act gives free access for the purposes of education and recreation, to the land, space above the land and space beneath the earth (i.e. caves). For better or for worse there are very few caves in Scotland and so far as I am aware none of them have yet reached the status of 'honeypots'! But, as its name implies it only applies to Scotland.

David Judson

24 March 2010

This unfortunate set of events was probably the catalyst to the deep divisions of the CRoW debate. To some extent BCA must accept responsibility as the architect of at least some of the problems which have arisen with CRoW over the last five years. BCA largely ignored the CRoW Act during the noughties which were the major years of discussion and implementation and allowed a minority voice to set the scene for years.

At this AGM we have before us a very different policy on CRoW. This policy has followed due process. Beginning with a poll of the membership over the CRoW campaign and later a ballot vote on constitutional changes. BCA council then passed the following motion in January, "C&A committee to prepare a draft policy statement, kept as brief and meaningful as possible, that BCA believes with good reason that the CRoW Act, as-is, applies to caving."

This was duly done and passed by the C&A committee and handed back to the April council meeting and is now before the AGM for final ratification.

BCA policy statement on the Countryside and Rights of Way Act 2000 (CRoW)

- 1. The British Caving Association holds the opinion that the CRoW Act already permits access for recreational caving. (Note: this view has been verified by the legal opinion of Dinah Rose QC and supported by many external organisations and individuals as well as its own members).**
- 2. The access principles of the CRoW Act are in accord with BCA's own principles of improving access to caves. The BCA encourages caving bodies who have control of access to caves on 'access land' to renegotiate access agreements to reflect the rights provided by the CRoW Act.**
- 3. The conservation of caves are important. BCA conservation code applies to all caves regardless of the land designation. The BCA agrees with the CRoW guiding principle of the least restrictive option to meet the conservation or safety need.**
- 4. The BCA believe that any particular conservation concerns on CRoW 'access land' can be adequately dealt with by those means already set out in the legislation. BCA recognise that many of the concerns raised prior to introduction of the Act never materialised and access to caves should be no different.**
- 5. The BCA will support cavers in their work to develop access to caves on CRoW access land.**

Reference documents;

- 1. Dinah Rose opinion**
- 2. Conservation Code and Guidelines**
- 3. Educational strategy for conservation**
- 4. Section 26 advice to ACBs**

Finally I shall voice the same concerns I have voiced several times over the last three years. Namely the abuse, and efforts to undermine my position, by the anti-crow brigade. This should be an important issue for BCA and it is one where I feel BCA has made a poor account of itself. I was pleased to see the retiring chairman finally mention the subject in his newsletter report but he will remember that some of the on-line abuse I suffered was fuelled by one of his own executive colleagues. I hope that this will not be allowed to continue under our new chairman and that my successor will be much better supported in his endeavours to fulfil the expectations of our membership.

Speaking of my successor, David Rose has put himself forward to take on the role. David has a good understanding of the task in hand with excellent contacts in government and is well positioned geographically to further our policy. I wholeheartedly support his appointment and hope council will co-opt him into the role following our AGM. I have established the

basics of a CRoW working group for my successor to take over and I am happy to participate myself where required.

For those who had hoped to see the back of me at council meetings I am sorry to disappoint as for the foreseeable future I shall be acting as CNCC rep to BCA. See you there.

Tim Allen

June 2018