

The CSCC Position in respect of the CRoW Act.

At the recent BCA Council meeting (11th October 2014) a decision was made to ask all the membership, by ballot, for a direction on whether the Association should campaign for this Act, passed in 2000, to apply to caves and caving. Those in favour of this action maintain that this is a simple matter that would result in unrestricted access to affected caves with little or no downside. CSCC do not agree with that view and would like you to consider the following points before making your decision.

- 1) The majority of caves that the pro-CRoW lobby consider to be affected by this are in the Yorkshire and Lancashire dales, on open moorland. However, there are other sites affected in different parts of the country where conditions are different, but a broad-brush legalistic approach does not allow for regional differences to be considered and taken into account. The law, clearly, will be the same throughout the country.
- 2) One of the major reasons for restricting access to some caves is on conservation grounds. Those in favour of CroW argue that restrictions can be kept in place, where necessary, by use of Section 26 orders under the Act. However, as no such order has – as yet - ever been applied to caves for the obvious reason that the relevant government agencies (DEFRA and Natural England) do not think that CroW applies to the underground, it is not known what criteria would be applied to these decisions, how long the process might take and whether any restrictions could be legally kept in place during the process. All we can be sure of is that Natural England will not have additional resources to deal with this, neither now, for known caves, nor in the future, for new discoveries.
- 3) The CRoW Act does not grant any rights to dig, either on the surface or underground. Thus digging permissions will continue to require negotiation with landowners and, in the case of SSSIs, Natural England. It is not known how this proposed change may affect this process. Two possible problems are that landowners may be less willing to grant digging permissions as these will increase their own liability for what is happening on their land. Their insurers may not allow this. The second is that conservation-minded landowners may be unwilling to allow the discovery of new caves on their land that cannot then be easily and promptly protected, as described above.
- 4) Landowner relations have always been an extremely important part of caving as an activity. Cavers have always relied on the goodwill of landowners to go caving, and the CSCC have, for many years, worked hard to maintain good relations with landowners on Mendip. One of the problems with the CRoW act is the fact that open access land is often in fairly small pockets, so local landowners do have a problem with walkers wandering from open access land on to privately owned farmland (this is less of a problem in other areas where whole fells are open access). It is likely that including caving within CRoW activities will exacerbate this issue, at least locally. It should also be noted that the CNCC have approached a number of estate landowners in the Dales, and the only one that replied stated that whilst they were aware of the debate they didn't think that the situation had changed and that they do not consider caving to be a permitted activity under CroW.

If the result of the referendum is a clear yes vote then the BCA will have a mandate from their members to try to challenge the current advice from Natural England, and will push for cavers to have the right to freely explore underground sites that have entrances on CRoW land (there will also have to be a 2nd referendum to change the BCA constitution, since to do so at present would be against section 4.6 which currently states that “the owners and tenants of property containing caves have the right to grant or withhold access”).

If the result of the referendum is no, then the BCA will continue to accept the advice from Natural England / DEFRA that CroW does not apply to caves and caving and will not campaign to have caving and going underground recognised as a permitted activity – i.e. if the result is no then the current status quo will continue.

The debate about the CRoW act is an important one for cavers. CSCC hopes that this summary of the issues will provoke some debate, and that everyone will give the matter some thought before casting their vote.