

## **Minutes of the CNCC Additional Committee Meeting held on 31 May 2014 at Hellifield Village Institute at the request of YSS, Earby and ULSA**

The meeting commenced at 09.30.

**PRESENT:** R. Holmes (Chairperson), Matt Ewles (Secretary), Glenn Jones (Treasurer), Paul Whittaker (**V** Burnley Caving Club (BCC)), Fay Hartley (BCC), Sam Lieberman (**V** Red Rose Cave and Pothole Club (RRCPC)), Johnny Latimer (Earby Pothole Club (EPC)), Andrew Hinde (**V** Gritstone Club), Pete Monk (**V** Northern Boggarts), Tony Brown (**V** Northumbrian Speleological Group), Steve Kirk (**V** Craven Pothole Club (CPC)), Gary Douthwaite (York Caving Club/website manager), Kay Easton (**V** Bradford Pothole Club (BPC) and minute taker), Martell Baines (BPC), Ian Cross (BPC), Tim Allen (Northern Caving Club), Simon Wilson (**V** EPC), Alan Speight (Yorkshire Speleological Society (YSS)), Fiona Durham (**V** YSS), Victor Wain (**V** White Rose Pothole Club), Jonathan Tomkins (**V** Over and Under Caving Club), Sam Allshorn (**V** University of Leeds Speleological Association (ULSA)), Jim Sloane (**V** Lancashire Underground Group)

(Note: Official voting representatives of Committee member clubs are indicated by **V**)

**1. APOLOGIES.** Yorkshire Ramblers, Les Sykes (Training Officer), Bernie Bond

**2.** The meeting paid tribute to Don Mellor whose death was announced recently.

### **3. DISCUSSION ON MATTERS RELATING TO THE CROW ACT**

The Secretary invited Sam Allshorn to outline why ULSA had requested the additional Committee meeting. But first Sam registered a complaint that ULSA's submission had been altered by the Secretary by the addition of sub-paragraph numbers. He said that even punctuation changes could change the meaning of a sentence and, although the Secretary had advised ULSA of his intention to make the change, ULSA had not replied giving permission. In particular, ULSA were unhappy that the changed version had been published under the ULSA letterhead, giving the impression that this was the original version as submitted. (*ULSA's original meeting request without changes is now available on the website for comparison*).

Sam continued to say that the main business of the meeting was to decide how to respond to the proposal from the Bob Mehew and the BCA CRoW working group for the BCA AGM. Johnny Latimer said it was important that this matter was discussed by CNCC in advance of the BCA AGM, and this was endorsed by Fiona Durham.

The Secretary said that he had sent an Email to all full member clubs to invite them to either attend the meeting to give their views or to make a statement which could be presented on their behalf. Four responses were received, from the Northern Pennine Club, Kendal Caving Club (KCC), St Helens Caving Club (SHCC), and Philip Judson of the Gay Outdoor Club (GOC). The Secretary said that these had not been made available ahead of the meeting as some had only been received in the last week, and therefore he read each out in the following order:

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#### CRoW statement from Philip Judson

"To respond to your email about the forthcoming meeting – this is my personal statement rather than one based on discussion with the GOC membership.

My interpretation of CRoW is the same as that expressed by the organisations you have approached – i.e. that "open air" means "open air". Given that the current permit system for access to the key relevant areas works well (Leck, Casterton) and that a reasonable degree of protection both of caves and of the access routes to them is desirable I see no reason for change. The current effort to re-interpret CRoW seems to me more to do with class conflict than with concrete access issues".

#### CRoW response from St Helens Caving Club

"SHCC will not be able to send a representative to the CNCC committee meeting to discuss the CRoW Act, however, we do support any measures that the CNCC committee decide to take that will benefit its membership.

If in the long term it is decided that we do have access under this Act, how will that affect membership not only of CNCC but BCA because we will not require permits or insurance and they are the two fundamental principles that BCA is built on?

I think there may be some interesting times ahead, because even if we do have additional access rights under the Act, there is still enough legislation to restrict our activities, Bats live and hibernate there and the areas are SSSI's, two powerful bits of legislation that they can beat us with if they want. Do you think that what we may gain under the Act may be offset significantly by restrictions from other legislation?

At times like these I think it is important that the CNCC maintains its relationship with not only the Estate owners but also Natural England and that CNCC works closely with BCA".

### CROW response from Northern Pennine Club

"Following your email, we discussed CROW Act and access to caves at our recent committee where a large number of members were present. In summary, the consensus was:

1. We are happy with the status quo - permits, etc
2. We are concerned that access based on CROW Act without agreement with landowners that this lies under the Act could seriously jeopardise relationships with landowners and hence cause significant problems
3. We think that there is no possible interpretation of the CROW Act that would enable access for digging and hence this will always require landowner's permission.

We are not able to send a representative to the meeting so please convey these views to the forthcoming meeting.

I canvassed our wider membership by email and as expected got a range of views".

### CROW response from Kendal Caving Club

"Following a two week long consultation period to which all KCC members were invited to contribute the following conclusions were reached.

The overwhelming majority of members were of the view that access to all caves on CROW land should be of exactly the same status as the freedom of access enjoyed by walkers and rock climbers for example. The view was frequently expressed that the crucial phrase "open air enjoyment" was perhaps an unwise choice but that its intention was to have the same meaning as "outdoor enjoyment". Few would argue that caving is not an outdoor activity (unless we are to start worrying about the "trapdoor" on Lancaster Hole etc).

The issue of cave conservation was raised, with the question as to whether a permit system in any way helps to limit damage to caves. In relation to this it was pointed out that the existing permits system does not exist specifically to protect caves. Also caves in areas with open access to caves (such as Kingsdale) do not seem to suffer any more damage than those for which permits are required. Should any particular cave require special control of the number of visitors it gets this should be considered on a cave-by-cave basis. One member suggested that perhaps controlling access could replace the taping off of sensitive areas underground but this view was not widely supported.

It was suggested that the permits system helps avoid congestion in popular caves. Again the comparison with caves in open access areas was drawn with

the observation that this problem rarely seems to happen there. A related comment was that the existence of permits can make it difficult to change the venue for a club meet in response to bad weather, which has been much more of a real problem for our club. It is pertinent to point out the suitability of Lancaster Hole in this respect.

The question of caves near private residences (e.g. Robinson's Pot) was raised, but clearly this is a different issue as such caves are not on CRoW land. Should a problem arise in this connection surely it could be dealt with separately.

In conclusion the main consensus was that as far as CRoW land is concerned, caves should be treated as access land and cavers should enjoy the same freedom of access underground as those pursuing other activities on access land. To paraphrase one member "why should I not be free to walk across the moor in a yellow suit when others can do so in their anoraks".

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Discussion was then opened to the floor.

Jonathan Tomkins said there was no reason not to seek legal advice on the interpretation of CRoW as relating to caving.

Sam Lieberman said that he had received informal advice from an ex-lawyer to the effect that a Court of Law would be likely to take the view that any access agreement would take priority over any rights under CRoW. In the event of an interpretation of CRoW that was favourable to caving, then to take advantage, permit arrangements would need to be discontinued.

Glenn asked whether the meeting accepted that the current situation was that the position of national governing body (i.e. BCA) was that caving was not allowed under CRoW. He pointed out that the starting point of any legal opinion would be "what is the view of the governing body?"

Sam Allshorn reminded the meeting that the BCA view was a "position" not a "policy", i.e. it had not been agreed by the Executive Committee and remained the personal view of the BCA Legal Officer.

Andrew Hinde said that current advice from BCA was neither rational nor sensible in the context of advice from the head of profession of Natural England (NE) regarding open pots, and we had now an opportunity to change it. He said that BCA had a Conservation and Access Committee, although it was non-functioning, which was why the CRoW work was being carried out by a working party under the chairmanship of Jenny Potts. The correct approach would be to use the structure of BCA, i.e. the Conservation and Access Committee, rather than to try to change the terms of reference of the working party.

Glenn said that the Conservation and Access Committee had been chaired by the late Elsie Little, and members were the Conservation and Access Officers from the regions.

Andrew said that was technically correct, but that a working party was arguably more effective than attempting to pump life into a dead horse. Tim Allen said that Jenny Potts had wished to keep the group informal to encourage input. Bob Mehew's proposal would put some structure to the group.

Andrew Hinde said that the working party had been effective during the contribution phase, but when it came to drawing up a policy, he felt that that should go via the Conservation and Access Committee and thence to the BCA Committee.

Tim Allen said he had had advice from the Head of Profession for CroW in Natural England that access to some parts of some caves is included within CRoW. He said that the NCA had been proactive in under Conservation and Access Officer Graham Price in promoting the inclusion of caving within CRoW. In 2001 Graham Price had resigned, Elsie Little and Dave Judson took over, and impetus was lost – hence Jenny Potts's proposal for a working group to investigate and report back, which has now happened. The groups had discussed the situation with a top barrister, who opined that no Court would decide against given what was written in the CRoW Act and the fact that caving has not been excluded. The barrister is willing to act pro bono.

Pete Monk accepted that the current situation was anomalous and illogical and asked whether a change to the Act would be needed. Tim said it would not; a favourable interpretation would say that caving was included as an allowable activity on CRoW land. Unlike the situation for fishing, paragliding, etc, the Act does not list caving as an excluded activity.

Alan Speight warned that a response to insensitive use of CRoW by individual cavers could be that farmers would block all access to caves. Sam Lieberman reminded the meeting that there had been a history of filling in caves on Leck Fell, and said that CNCC should use its good relationship with landowners to ease the implementation of CRoW rights.

Jonathan Tompkins said these comments applied equally in the context of cavers currently ignoring the permit system, and expressed his intention of abiding by whatever arrangements CNCC put in place.

Andrew Hinde felt filling in entrances was not a likely widespread response; instead landowners would make use of SSSI status. Bodies such as CNCC would have to start considering measures for conservation of individual caves. There was provision under CRoW to permanently restrict access. He asked who would administer this – Natural England? Or CNCC with its expertise? None of this would solve the problem of cavers operating outside the

agreements.

The Secretary asked Andrew Hinde to what extent could the SSSI status of a cave on CRoW land be used to hinder access. Andrew Hinde replied that this was variable and depended on a number of factors.

Tim Allen felt the landowner would need to produce compelling reasons to step up their restrictions on SSSI grounds, especially against the background of ongoing quarrying and pavement removal. Gaping Gill (with the exception of East passage) was a good example of reasonable conservation despite a high level of access.

Sam Lieberman added that the only monitoring of underground SSSIs is done by cavers. Andrew Hinde said that CNCC is where the expertise resides, and that CNCC mustn't allow its responsibility to be taken away because of a failure of policing.

Alan Speight said that currently cavers had access to caves. He felt there was no big problem. The meeting needed to move on to consider the proposal and to reject it or not.

Andrew Hinde said if the proposal was accepted, CNCC needed to understand the consequences regarding monitoring and permit systems. Roy Holmes said only cavers were in a position to monitor caves.

Fay Hartley said that Burnley's adopted cave, Red Moss, has been blocked under the current system, and has suffered damage.

Tony Brown said he supported the comments of Alan and Andrew, but that this issue wouldn't go away – if CNCC rejected the proposal, it would continue to be brought up. He asked if accepting the proposal and obtaining a favourable opinion would mean that CNCC would have foregone the option to continue with the permit system. Sam Lieberman said that a permit system could be considered an illegal restriction under CRoW. CNCC could have a permit system by "gentleman's agreement" but there could be no sanctions against those ignoring it.

Simon Wilson said that CNCC was already in breach of CRoW – the permit system prevented cavers from exercising their right to cross open access land.

Andrew Hinde suggested that southern clubs might be less interested in supporting the proposal, and asked how many of the southern cave owning clubs had caves on CRoW land (Sam Lieberman stated that most did not), and who had voting rights at BCA. Sam Allshorn explained that voting was arranged in two "houses" a) clubs and authorised bodies, with each club and each body such as CNCC having one vote b) individuals, with each CIM and DIM having one vote. A proposal had to be passed by both houses, so that

each house had in effect a right of veto.

Tim Allen said a further complication was that the report was to be considered under AoB, and any motion arising from AoB could only be put forward for a vote with the Chairman's agreement.

He said that a member of the Cambrian Caving Council (CCC) was present at the meeting, and suggested the meeting should ask him to speak on the situation in the south.

The member of CCC identified himself as Stuart France, and said he was Conservation and Access Officer for Cambria. He said Jenny Potts's review covered England only, as Wales was a different legislature, although the CRoW equivalent in Wales was largely analogous to CRoW in England. The Minister of Sport and Culture had announced a review of the legislation in Wales. However, the Minister had discovered the problem to have more complexities than he realized, in particular in the area of water sports and angling, and had this week announced that nothing would be done within the lifetime of this parliament.

He went on to describe the situation in Wales and in the area covered by the Council of Southern Caving Clubs (CSCC). Wales had large amounts of CRoW land with caves, and some, e.g. OFD, were SSSIs. The landowner has a duty not to harm SSSIs, but access to SSSIs is under the control of Natural Resources Wales, who have devolved the job to management committees for caves such as OFD. So a legal opinion on caving within CRoW would not affect SSSI caves in Wales.

Ogof Draenen was not a SSSI, and one of its 3 entrances is on Access Land.

Both CSCC and CCC had recent major changes in personnel, to opposite effect. In CCC, the current officers were concerned to push the case for caves to be included within CRoW whereas in CSCC the current officers were against more open access. The argument was between those who felt it was important to keep landowners sweet compared with those who felt cavers should acquire as many rights as possible – Stuart felt the solution was somewhere between these extremes.

Stuart argued that cavers were still going to need good relations with landowners for digging; digging certainly would not be allowable under CRoW.

Landowners had already accepted walkers rights under CRoW, and there was no reason the same would not be true in respect to cavers, since the result would be little different from "business as usual". Ogof Draenen receives around 200 caver visits per annum, and Stuart was firmly of the view that that is unlikely to increase under CRoW.

Andrew Hinde said that Natural England did not wish to be in a position of authority over access to SSSI caves. Natural England needs cavers more than cavers need Natural England. It would be phenomenally expensive for NE to employ inspectors of caves, and would have intractable H&S problems. For this reason NE wishes access to be a matter between cavers and landowners. The landowner is responsible for damage to a SSSI; NE cannot pursue a 3rd party.

Stuart France said CCC has tried to liberalise access, to make keys available to more clubs. The problem area remains independent cavers; some way needs to be found to bring them into the fold.

Fay Hartley said she had wanted to do Rowter Hole but was refused access because of filming lasting for 4 days. She wondered what the legal position was. Andrew Hinde said this was not a Right of Access issue.

The Secretary proposed Bob Mehew's proposal to BCA, seconded by Jonathan Tomkins. The motion was passed 13-0.

#### **4 ACCESS OFFICER**

Johnny Latimer explained he and Les had had discussions and Les had withdrawn his nomination, and would work closely with Johnny for the first year, introducing him to landowners, an offer for which Johnny was very grateful. He then summarized the statement he had prepared for the meeting.

The Committee voted 13-0 to co-opt Johnny Latimer as Access Officer.

#### **5 ANY OTHER BUSINESS**

Sam Allshorn asked that the Committee should consider a proposal to the AGM that the Constitution should be changed to make Access Officer an elected post. The Secretary replied that discussion on that was an Agenda item for the scheduled Committee meeting on 28th June.

Sam said his club had asked him to put various questions to the Committee:

Why was the CNCC paying a fee of £100 to the Kay-Shuttleworth Estate? Roy Holmes said that the Estate had proposed a payment of £10 per caver visit, but after negotiation had accepted a flat payment of £100pa.

Who, when and why, had agreed the access fee for Boreham Cave? Andrew Hinde said he had negotiated with the landowner. CNCC was not in a good negotiating position with regards to this cave.

Sam said the exact amount of the fee was not important; any fee set a precedent.

Simon Wilson asked why approval of the January Minutes was not on the Agenda. The Secretary said it was on the Agenda of the scheduled meeting in June.

Sam Lieberman said that work stabilizing the entrance to Lancaster Hole was effectively finished, although the permanent lid was not yet in place.

Tim Allen was concerned over conservation in the event of increased access through CRoW. He was trying to get together a proposal with regard to a national caver training initiative, and asked for CNCC support for an investigation and report. He was planning a proactive approach – more than just producing leaflets – as a way of allaying landowner concerns over their conservation responsibilities. Glenn Jones reminded him of the existence of Conservation policy handbook. Roy Holmes said the big problem was the people who don't cave via clubs and are difficult to reach. Sam Lieberman said that university clubs had a constant turnover, which made it difficult to maintain continuity of knowledge.

Gary Douthwaite said the CNCC website currently had little information about Conservation, and he was going to discuss with Andrew Hinde whether the considerable information published elsewhere could be incorporated into the website.

Pete Monk proposed that CNCC should actively sponsor a conservation education initiative, seconded ULSA, passed 13-0.

Glenn commented that if it were a national policy, then it should be funded by BCA rather than by CNCC.

## **6 DATE AND PLACE OF NEXT MEETING**

28th June 2014, Hellifield Institute, 9.30am

The meeting closed at 11.05