Response to the call for evidence by the House of Lords Select Committee on the NERC Act

Introduction

1 Peak Horsepower is a British Horse Society-affiliated bridleway group. It has over 350 individual members and all the riding clubs and bridleway groups in the Peak District are organisational members. At its founding meeting in 2011 it was clear that the overriding issue of concern which had brought riders together to create the new bridleway group was the serious impact which recreational motor vehicle use of off-road riding routes in the Peak District is having on rider access and safety. It is this concern which prompted our response to the Committee and our comments on the working of S67 of the Act. We have also taken the opportunity to comment on the effectiveness of Natural England in promoting access to the countryside.

Summary

2 Natural England's current methodology for allocating capitals funds has prevented completion of the Pennine Bridleway.

3 Natural England needs to take a stronger lead in developing and improving the bridleway network.

4 Section 67 of the Natural Environment and Rural Affairs Act 2006 sought to address widespread public concern about the growing use of unsealed highways by recreational motor vehicles. The exemption under S67 2(b) of the Act from the extinguishment of motor vehicle rights over routes on the List of Streets has defeated the original intention of the Act and has led to extensive and growing motor vehicle use and damage to the country's 3000 miles of Unsealed Unclassified Roads (UUCRs). Use of these unsealed routes is excluding horse riders from previously safe off-road riding routes and putting them in danger. New legislation is required to exclude motor vehicles from these routes. In addition, Defra should give firmer and clearer guidance to Authorities on the need to use Traffic Regulation Orders to manage recreational motor vehicle use of the 2700 miles of Byways Open to All Traffic.

Question 6 - How effective have NE and other partners been in promoting better access to the countryside?

Promoting better access: the Pennine Bridleway National Trail remains incomplete

5 Natural England (NE) has responsibility for promoting access to the countryside and open spaces, for encouraging open-air recreation and for securing the provision and improvement of facilities for enjoyment of the natural environment. The 13 English National
Trails are now managed by the new Trails Partnerships but NE remains their main funder and the Trails play an important part in NE meeting its statutory responsibilities.

6 The Pennine Bridleway was approved in 1995. Funding of £1,841,876 was allocated by Sport England and the project team was appointed by the Countryside Agency, which became part of Natural England. Work began on the Trail in 1999. It was opened in stages and the ‘completed’ route was formally opened by Martin Clunes, President of the British Horse Society, in 2012.

7 In fact, the Trail has not been completed. This is despite new NE funding to complete it having been agreed in principle and despite the importance of the Trail to horse riders from all over the country and to local riders, walkers and cyclists. Five years on from the formal opening there is a crucial 5-6 mile gap in the Trail around Glossop. The gap means riders have to face and use busy roads through and around Glossop. These include a section of the A626 and narrow unclassified roads which are popular ‘rat runs’ with high volumes of traffic. The advice to riders from the National Trails is to use a horse box to avoid this part of the route. For the many hundreds of local riders in the area who would like access to safer riding this isn’t much help. And if you’re a long distance rider you don’t have a horse box with you.

8 Peak Horsepower has been exploring the 'Glossop gap' with both NE and the partner funder and commissioning authority for this part of the Trail, Derbyshire County Council (DCC). We have discovered that the reason why this final part of the Pennine Bridleway has not been built lies in the way NE allocates capital funds.

9 NE has only an annual budget for capital works. DCC says that this funding method does not give them sufficient time to do in one year both the necessary preparatory work and the construction work on the ground, which they can do only between the end of August and the end of October. Work on the ground is restricted to this period because the 'gap' in the Trail is on an ecologically sensitive sight (ground nesting birds) and high exposed ground where engineering work cannot be done during the winter months.

10 DCC is unwilling to take the risk of allocating resources to start the necessary preparatory work before it receives NE funding. NE will not make a capital funding commitment beyond one year, despite longer term funding clearly being needed for this particular project.

11 It is clear that NE needs a more flexible method of managing its capital funds in order for the Pennine Bridleway to be completed. We therefore ask the Committee to recommend a change in the NE capital funding methodology. The methodology needs to be sufficiently flexible to allow NE to commit capital funds for more than one year.

Promoting better access - the bridleway network remains fragmented and disconnected
There is a clear need for an extensive and well-connected bridleway network to provide safe off-road horse riding. The existing network is fragmented, disconnected and unevenly distributed.

In 2012 NE introduced an initiative to create new rights of way delivered as community projects. This initiative operated as the Paths for Communities scheme and it ran until 2014 with total funds of £2m. The scheme was modest in scale but an effective model for partnership working and in many area of the country it made a significant contribution to improving the bridleway network. But it was quickly oversubscribed.

We believe that if NE is to be able to continue to deliver on its remit of improving access it should be funded to re-introduce the Paths for Communities Scheme and to run it on a bigger scale. We invite the committee to make a recommendation along these lines.

Many rights of way currently classified as footpaths could easily be upgraded to bridleways, enabling them to be used by cyclists and horse riders and by people with disabilities who used the rugged type of mobility scooters designed for use in the countryside. The Welsh Assembly is currently consulting on such a proposal for Wales. We would like to see NE and Defra begin to take the lead on this issue in England and work together to develop a proposal for the upgrading of footpaths to bridleway in England wherever suitable.

**Question 11: Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?**

**Section 67 of the NERC Act**

Section 67 of the Act came about because of increasing and widespread public concern about the use of unsealed highways by recreational motor vehicles. The issues were the damage this use was doing to the countryside, the impact it was having on local communities and non-motor vehicle users, and the growing number of unsealed routes which were becoming Byways Open to All Traffic (BOATs), ie rights of way proven in law to carry legal rights for mechanically propelled motor vehicles as well as for pedestrians and equestrians. (Defra consultation document 'Use of Mechanically Propelled Vehicles on Rights of Way', December 2003)

The effect of S67 was to extinguish any recorded public motor vehicle rights on the vast majority of footpaths and bridleways which were on the Definitive Map of Rights of way as at 2006. Prior to the extinguishment many of these routes would have become BOATs because they carried historic public rights for horse-drawn vehicles.

S67 was a welcome development but it has not prevented an exponential growth in the use by 4x4s and motor bikes either of existing BOATs or of the 3000 plus miles of unsealed unclassified county roads (UUCRs) on the List of Streets.

This growth has come about because 'off-roading' has become a more popular leisure activity since 2006 when the Act was passed, but crucially because NERC exempted from the extinguishment of motor vehicle rights all routes on the List of Streets (Section 67 2b). This exemption included the entire network of UUCRs. The exemption was on the grounds that extinguishing motor vehicle rights on the UUCRs would interfere with the ordinary road network. (Defra guide to highway authorities on interpreting S67 of the Act, May 2008).
return to the impact of this exemption and the notion of UUCRs as part of the ordinary road network in paragraphs 29 to 34.

The issues

20 Horses and riders need off-road routes away from motor vehicle traffic. According to the latest statistics from the British Horse Society there has been a 29% increase in on-tarmac incidents involving riders the last year alone. Since 2012, riders have been involved in over 2000 reported on-tarmac incidents involving motor vehicles and 180 horses and 36 riders have died in road accidents. (See http://www.bhs.org.uk/our-charity/press-centre/news/jan-to-jun-2016/riding-and-road-safety-campaign)

21 To get away from the tarmac roads, horses and riders depend not just on bridleways and restricted byways but on safe access to BOATs and UUCRs. They depend on BOATs and UUCRs because bridleways and restricted byways are very unevenly distributed, both across the country and within different parts of each English county. Within the Peak District for instance, only 10% of public rights of way in Derbyshire are bridleway compared with 17% nationally. 1.2% are restricted byways compared with 3% nationally (Derbyshire Rights of Way Improvement Plan). The position is even worse in Staffordshire. According to that county's Rights of Way Improvement Plan, in over 54% of the county there is no access to any off-road right of way for horse riders.

22 The surfaces of BOATs and UUCRs become severely damaged if they are used regularly by powerful modern motor vehicles. As horses cannot safely use a severely damaged surface, riders are increasingly being excluded from both BOATs and UUCRs.

23 Many BOATs UUCRs are inherently unsafe for equestrians regardless of surface issues because they have features such as very narrow width, blind bends and nowhere to pass or be passed safely by motor vehicles.

24 Horses are flight animals, most of them are frightened by the sound of revving motor bike engines and they tend to panic if they can hear one of these vehicles approaching.

Is the problem is nationwide?

25 These issues are so severe in the Peak District, particularly within the National Park, that Peak Horsepower decided to find out whether or not the problems being faced by our members are nationwide. In the autumn of 2016 we therefore carried out the first ever national survey on the impact which motor vehicle use of off-road riding routes is having on riders. The survey was sent to over 1000 bridleway groups, riding clubs and other types of equestrian organisation in England. The survey questions are reproduced for information at the end of this submission. Full details of the survey and its findings are at file:///C:/Users/Patricia/Downloads/Offroading%20survey%20finalapr17%20(4).pdf

26 Three quarters of the organisations which responded to the survey said that their off-road horse riding routes are being used by 4x4s and motor bikes. Ninety per cent of these respondents said that these vehicles are creating problems on one or more of their off-road riding routes. Over a third of them said it is causing problems on many or most of their off-road riding routes.

27 Respondents who reported problems were asked what kinds of problems they are facing.
- 79% said that 4x4s and motor bikes have damaged the surface of their off-road riding routes
- 72% said that the noise of off-road motor vehicles is frightening horses
- 54% said that vehicle speed is a problem
- 54% said their riding routes are too narrow to be passed by a motor vehicle easily or safely on a horse
- 51% said there was nowhere to get out of the way of motor vehicles
- 35% said that blind bends are a problem.

The most severe problems appeared to be in Berkshire, Devon, Kent, Lancashire, North Yorkshire, Somerset and Surrey but the survey found that riders in all English counties are being adversely affected and that use of BOATs and UUCRs by recreational motor vehicles is indeed a nationwide problem for equestrians.

**Unsealed unclassified roads and S67 2 (b) of the Act**

Section 67 2 (b) of the Act exempted routes on the List of Streets (ie the UUCRs) from the extinguishment of motor vehicle rights because at that time Defra regarded routes on the List of Streets as part of what it called 'the ordinary road network' and feared that extinguishment would have unforeseen adverse effects on the network. This has proved a mistake. The unforeseen adverse effects have been not on the ordinary road network but on the non-motor vehicle users of the UUCRs.

The exemption of routes on the List of Streets has meant that the NERC Act has not achieved its aim of curtailing growth in recreational motor vehicle use in the countryside. Contrary to expectations at the time the Act was passed, and despite the intentions of the Act, 'off-roading' today is having an ever wider and deeper impact on the countryside, on local communities, farmers and non-vehicle users, with equestrians being particularly disadvantaged. Highway Authorities meanwhile cannot keep pace with the scale of the damage being done to the surfaces of their unsealed routes and have insufficient funds to repair them. Repair costs are reported to be up to £75k a mile.

UUCRs are not 'ordinary roads'. They are unsealed and, like BOATs, they were designed for horses and carts and are unable to withstand use by powerful modern motor vehicles. The rights of way on all of them are unknown, unlike BOATS and other categories of route on the Definitive Map of rights of way. The only certainty about UUCRs is that they carry rights for pedestrians.

The following photographs illustrate the type and scale of damage which recreational motor vehicles are doing to the UUCRs. All the UUCRs illustrated used to be easily and safely used on horseback. What the photographs show is typical, not exceptional, and they illustrate the absurdity of continuing to regard the country's UUCRs as 'ordinary roads'.

*Swan Rake Peak District National Park*
Back Lane, Darley Dale, Matlock
The solution: UUCRs and the List of Streets

33 The solution for UCCRs is to either to amend S67 of the NERC Act to extinguish unrecorded motor vehicle rights on unsealed routes on the List of Streets, or add unsealed routes on the List of Streets to the Definitive Map of Rights of way by statute as Restricted Byways. Either solution would allow UUCRs to be used by walkers, cyclists, horse riders and carriage drivers but not by recreational motor vehicles. Under either option, the duty of the highway authorities to maintain all these routes would not be affected.

34 As the creation of new rights of way across their land by statute is unlikely to be acceptable to landowners, we believe that the simplest option and the one widely acceptable to local communities and all non-vehicle user interests, including landowners, is the extinguishment of recorded motor vehicle rights on the UUCRs, with exemptions for residents, landowners and emergency service vehicles. We urge the Committee to make recommendations along these lines.

Byways open to all traffic (BOATs)

35 The position with regard to BOATs as far the NERC Act is concerned is different from the position as regards the UUCRs. Whereas the public rights of way on all UUCRs remain unknown, the BOATs have known and proven legal rights for motor vehicle users, in most cases simply because these routes were used in the past by horses and carts. The only bearing which the NERC Act had on BOATs was to prevent the great majority of footpaths and bridleways from becoming BOATs after 2006. However, recreational motor vehicle use of
BOATs creates exactly the same problems for equestrians, other non-vehicle users, local communities and farmers as those produced by recreational motor vehicle use of the UUCRs, as the following photographs of some of the damaged BOATs in the Peak District National Park illustrate.

Hurstclough Lane Hathersage

Jacob's Ladder Stoney Middleton
The scale of the damage being done to BOATs (and to UUCRs) is placing a heavy financial burden on Highway Authorities. The burden far outstrips Highway Authority
resources and the repairs which Authorities do manage to do eventually fail because unsealed surfaces cannot withstand use by powerful modern motor vehicles.

37 Parliament is usually reluctant to take away rights which already exist, in this case the legal right to use all BOATs with a motor vehicle. Unless this right is removed by Parliament, the only way to limit or curtail motor vehicle use of any BOAT will remain through the use of a Traffic Regulation Order (TRO). These Orders can be made by the Highway Authorities or, if a BOAT is inside a National Park, by a National Park Authority.

38 There are difficulties in relying on the TRO regime to exclude or restrict motor vehicle use of unsealed highways. TROs can only be made one by one, ie route by route, they are resource intensive and they are frequently contested in the courts by the motor vehicle user groups. The latter difficulty is compounded by a worrying history of Authorities making errors in the TRO process which have led to Orders being quashed in the courts and high legal costs for the Authorities concerned (see http://www.gleam-uk.org/guidance/the-use-of-traffic-regulation-orders-to-restrict-motor-vehicle-use-of-green-lanes).

39 The result is that most Authorities are very reluctant to use TROs either to prevent damage to their unsealed highways or on any of the other legal grounds for making TROs which are open to them under the Road Traffic Act 1984 Section 1 (namely: to avoid danger; to facilitate the passage of other users; because the route is unsuitable for use by motor vehicles; because the route is specially suitable for walkers or horse riders; for preserving the amenities of the area; for reasons of air quality; or to conserve the natural beauty or amenities of the area).

40 In the Peak District, for example, although the Peak District National Park Authority has in recent years made a small number of TROs on grounds of natural beauty and amenity, the main highway authority, Derbyshire County Council, has yet to make a single TRO and has told us that it has no intention of doing so. They have told us in meetings that the reason they will not use TROs is because they are afraid of legal challenge and of the high costs they would incur if they were to lose. This refusal to use TROs has allowed extensive damage to unsealed routes throughout the Derbyshire Dales part of the National Park and across the whole county. The damage is growing and is on a scale that far outstrips DCC repair budget. We understand that this is the position in which most highway authorities find themselves. Meanwhile there is no means of redress for the villages, parishes and individuals badly affected by a highway authority's refusal to use or even to consider a TRO.

The solution for BOATs

41 Assuming that Parliament would not wish to remove the existing right to drive on BOATs with a motor vehicle, it is essential that Defra:

a) give clearer and firmer guidance to Highway and National Park Authorities that they should make TROs wherever there is evidence that any one of the eight the legal grounds for a TRO is met; and

b) point out to Highway Authorities that making a TRO on the legal grounds of preventing
damage to the road is likely to be a more effective and responsible use of public funds than incurring large and often repeated repair costs.

Conclusion
42 The NERC Act has failed in its intention to protect unsealed highways from use and damage by recreational motor vehicles. As a result equestrians are being put in danger and excluded from off-tarmac riding routes. Other non-vehicle users are also badly affected. To achieve the original aims of the Act new legislation is needed which will protect the network of unsealed, unclassified roads. Defra should take a stronger line on the need for Traffic Regulation Orders on Byways Open to All Traffic.

Peak Horsepower
September 2017

The annex, 'The Use of Off-road Riding Routes by Recreational Motor Vehicles, Survey Questions' is on the following page

Annex : The Use of Off-road Riding Routes by Recreational Motor Vehicles
Survey questions
1 Name of riding establishment or organisation ..................................................

2 Which of the following best describes your establishment or organisation:
   a) bridleway group
   b) riding club
   c) riding school/ equestrian centre with no hacking out
   d) riding school/equestrian centre with hacking out
   e) trekking centre
   f) hunt
   g) TREC group
   h) equestrian college

2 Which county are you in?

4 Do recreational motor vehicles (4x4s, motor bikes or quad bikes) use any of the off-road riding routes in your area?
   Yes/No/Don't know
   If No or Don't know, please go straight to Question 8

5 Thinking of the off-road riding routes in your area which are used by recreational motor vehicles, are they: (choose one only):
   a) bridleways or restricted byways (ie routes on which driving recreational motor vehicles is illegal)
b) Byways open to all traffic or other unsealed routes (ie other routes with no tarmac)
c) both
d) don't know

6 If off-road riding routes in your area are used by recreational motor vehicles:
(choose one)
a) This is not a problem for horse riders on any of these routes
b) This is a problem for horse riders on one or more of these routes
c) This is a problem for horse riders on many of these routes
d) This is a problem for horse riders on most of these routes

7 If use of off-road riding routes by recreational motor vehicles is causing problems for riders in your area, what are the problems? Please indicate all that apply
a) surface damage by motor vehicles
b) route too narrow to pass motor vehicle easily on a horse
c) blind bends
d) nowhere to get out of the way of motor vehicles
e) vehicle speed
f) vehicle noise frightens horses
g) other ................................................................

8 Please use this space for any comments you may wish to make about use of off-road riding routes by recreational motor vehicles..........

6 September 2017