

Committee(s)	Dated:
Planning and Transportation Committee	18 March 2019
Subject: Dockless Cycle Hire	Public
Report of: Director of the Built Environment	For decision
Report author: Bruce McVean, Department of the Built Environment	

Summary

Dockless cycle hire has been operating in London since autumn 2017. One operator, Mobike, operates in the Square Mile in accordance with the current City of London Corporation policy (adopted in October 2017, Appendix 1). Lime are also operating in London and provide e-bikes for public hire in Ealing and Brent. Two other operators, Beryl and Freebike, provide private cycle hire services but are seeking to expand into public hire. Other operators are likely to launch in London soon.

This report proposes a trial of a new approach to managing dockless cycle hire. This will allow operators who meet the selection criteria, including requiring customers to leave bikes in designated parking areas, to deploy a fixed number of bikes within the Square Mile. The trial will help inform the City Corporation's future approach to dockless cycle hire, including in the event of regulatory powers being brought into force.

Dockless cycle hire schemes do not require the express consent of the City Corporation to operate on City streets. While not being able to prevent dockless cycle hire schemes from operating, the City Corporation can remove bikes that are deemed to be causing an obstruction, danger or nuisance. Operators are then charged a fee to cover the costs of removal and storage. It is proposed to increase this fee from £82.58 to a maximum of £235. This will bring the maximum fee in line with TfL's fees and ensure the costs of removal and storage are fully recovered.

In recognition of the lack of regulatory powers available to local authorities, TfL and London Councils are exploring the potential for a London-wide byelaw. This byelaw would likely allow the City Corporation and the boroughs to control dockless cycle hire operators by designating approved parking areas.

Recommendation(s)

Members are asked to:

- Approve a six-month trial, with one or more operators, to test the proposed approach to managing dockless cycle hire.
- Agree that the approval of the criteria for participation in the trial and the selection of operators be delegated to the Chairmen and Deputy Chairmen of

the Planning & Transportation Committee and the Streets & Walkways Sub Committee.

- Suspend the current dockless cycle hire policy to allow operators to deploy bikes within the Square Mile during the trial.
- Agree to increase the charge for the recovery of dockless cycle hire bikes removed by the City Corporation from £82.58 to a maximum £235.

Main Report

Background

1. 'Dockless cycle hire' is a generic term for a short-term cycle hire scheme, similar to Santander Cycles, but with no on-street docking infrastructure. The schemes are commercially operated and do not require any public funding or subsidy.
2. The fact that no on-street docking infrastructure is required offers users more flexibility and avoids the risk of not being able to end a ride due to a docking station being full. It also represents a challenge, as users of dockless cycle hire can leave bikes anywhere, potentially obstructing pavements.
3. In October 2017, Members of the Planning & Transportation Committee agreed to adopt a policy on dockless cycle hire operations within the Square Mile (Appendix 1). The policy allows dockless cycle hire to operate on City streets subject to conditions. These include adherence to TfL's Dockless bike share code of practice and a requirement that operators do not deploy bikes within the Square Mile.
4. Two companies are currently operating in London – Mobike and Lime. Other operators are likely to launch soon, including Beryl and Freebike who have already approached the City Corporation. Beryl are trialling a small scheme in Islington, this is currently invitation only, and provide bikes to Enfield Council for staff use. Freebike provide e-bikes for staff at Waltham Forest Council and IHA Markit, who have offices on Ropemaker Street.
5. Mobike are the only operator with an agreement to operate in the Square Mile in accordance with current policy, i.e. bikes can be made available for hire if left in the City by a customer but cannot be deployed by Mobike. Their operational area also covers parts of Camden, Islington, Lambeth, Southwark, Westminster, Ealing and Hammersmith and Fulham.
6. Over the last six months, Mobike have been reviewing and rationalising their operations, focusing on a smaller area and charging customers if they leave bikes outside of this area. Mobike's current coverage of the City of London is shown in Appendix 2. This operating area has recently been expanded having previously stopped at the Museum of London Roundabout. The expansion should help alleviate issues relating to large numbers of bikes being left at the roundabout by people riding into the City.
7. Mobike have acknowledged that there have been issues with the management of their bikes while they have been adapting their operating model. This has included a longer response time of up to 24 hours for non-urgent requests to move bikes, i.e. bikes that are not causing an obstruction. New staff and processes are now in place to improve the management of bikes and reduce the

response time. However, they have indicated that sustaining 90 – 120 minute response times for non-urgent requests will be challenging for any operator.

8. Lime, who provide dockless e-bikes, currently have public hire schemes in Brent and Ealing. While we do not have any arrangement with Lime, the popularity of the City as a destination means that their bikes are sometimes left in the Square Mile by customers. If not rehired these bikes are removed by Lime, who have committed to remove any reported bikes within four hours.
9. Lime and Beryl have requested permission to operate in the Square Mile, in accordance with current policy, but discussions have been placed on hold until the Transport Strategy is adopted. Freebike have met with Officers and Members and proposed a public hire scheme that operates exclusively within the Square Mile.

Powers to regulate dockless cycle hire

10. Dockless cycle hire schemes fall outside the existing legislative framework and the City Corporation does not have powers to prevent dockless cycle hire schemes from operating in the City (see Appendix 3 for more details). Under current legislation, operators do not require consent or a licence from the local authority to operate as no infrastructure is placed on the highway. Bikes may be removed if they cause a nuisance, obstruction or danger.
11. Dockless cycle hire does not fall under the definition of street trading and Officers are of the view that it is doubtful that definitions of “waste” or “litter” in legislation apply.
12. The lack of powers to manage dockless cycle hire operators has been recognised by Transport for London and London Councils. They have proposed introducing a pan-London operating and regulatory framework for dockless cycle hire, supported by a new byelaw. It is considered that a London-wide regime is required because people want to make journeys irrespective of borough boundaries, meaning that separate borough by borough arrangements are not conducive to encouraging cycling.
13. While the details are still to be decided, the byelaw is likely to allow the City Corporation and the boroughs to designate parking areas for dockless cycle hire – in effect virtual docking stations – and penalise operators whose bikes are left outside these areas. This approach would allow the City Corporation to restrict parking provision where it has cause to do so. The byelaw would not allow the licensing of individual operators.
14. Creation of a London-wide byelaw would require the City Corporation and the boroughs to delegate their byelaw-making functions on this matter to London Councils’ Transport and Environment Committee (TEC). At their December 2018 meeting, TEC agreed in principle that a draft scheme for a London-wide byelaw based on controlled parking should be prepared. Delegations from the City Corporation and boroughs will be sought to enable the byelaw to be progressed when agreement is reached on the wording and any supporting documentation. It is anticipated that it could take 6 – 12 months for the byelaw to be made. Any delegation of powers to TEC would be the subject of a further report to the Planning and Transportation Committee.

15. Officers will continue to work with Transport for London and London Councils to support the development of a London-wide byelaw to regulate dockless cycle hire operations.
16. Government has acknowledged that there are no specific powers relating to dockless cycle hire schemes and has expressed a willingness to explore the need for a national standard on dockless cycle hire (Appendix 4). However, this does not appear to be a priority issue for the Department for Transport and any national standard would likely be similar to TfL's Code of Practice. Furthermore, the government has indicated publicly that there is no appetite for legislation on this issue. The byelaw making powers outlined above are therefore being explored in the absence of any centralised or national initiative.
17. While not being able to prevent dockless cycle hire schemes from operating, the City Corporation can remove bikes that are deemed to be causing an obstruction, danger or nuisance. These powers are consistent with the City Corporation's statutory duty to assert and protect the rights of the public to use and enjoy the highway, our network management duty and our duty to secure the convenient and safe movement of traffic (including pedestrian traffic).
18. If a bike is deemed to be causing an obstruction, danger or nuisance, the City Corporation's Street Environment Officers (SEO) currently manage dockless cycle hire bikes as follows:
 - As the owner of the bikes is known, any bike causing a nuisance or obstruction will be reported to the operator for removal within 90 minutes of notification. After this time bikes will be removed by the City Corporation without further notice.
 - If a bike is deemed to be causing a danger (including a danger caused by obstructing the view) to users of the highway it will be removed without notice (under Highways Act 1980 s149).
19. The operator is informed when a bike has been removed and is given the opportunity to recover the bike, with operators charged a fee of £82.58 on collection to cover the cost of removal.

Proposals

20. It is proposed to run a trial with one or more operators to test the effectiveness of controls that are likely to become available under the byelaw.
21. Appropriate parking locations, where bikes can be left for hire by operators or customers without causing an obstruction, will be identified. In the first instance, these will be areas adjacent to existing cycle parking where restrictions such as utilities covers have prevented the installation of fixed cycle parking. See Figure 1 as an example. Spaces will be identified having regard to the City Corporation's highway authority responsibilities to highway users, its traffic authority responsibilities for network management and its equality duties.

22. Initial analysis suggests this approach can provide space for approximately 250 bikes – this compares with almost 800 spaces for Santander Cycle Hire. In the event of requests for spaces from suitable operators exceeding supply, they will be allocated equally between applicants who meet the criteria to take part in the trial.



Figure 1: Example of spare capacity adjacent to existing cycle parking

23. Opportunities to provide additional parking areas will be identified once the trial is running. These could include locations on the Transport for London Road Network and on private land in agreement with owners and occupiers.

24. It may be necessary to apply temporary markings to help users identify parking locations, see Figure 2 as an example. Any costs for installing these markings will be met by operators.



Figure 2: Example of dockless cycle parking area marking

25. Requirements for operators taking part in the trial will include:
- a. Only deploying bikes at agreed locations and in appropriate numbers for that location as determined by the City Corporation.
 - b. Having no more than the allocated number of bikes parked in the Square Mile at any time and having appropriate processes in place to remove excess bikes.
 - c. Demonstrating that bikes can be accurately located and that redistribution processes are in place to move or remove inappropriately parked bikes within a fixed time period as determined by the City Corporation.
 - d. Having an easy to use reporting mechanism that allows the public and the City Corporation to report bikes that are damaged, vandalised, or inappropriately parked.
 - e. Making users aware of agreed parking locations and having an appropriate means of requiring users to comply with parking requirements.
 - f. Managing operations in a way that minimises traffic impacts and emissions from any vehicles.
 - g. Demonstrating that they have the financial resources available to operate while the trial is running and to maintain appropriate levels of staffing and management and maintenance standards.
 - h. Demonstrating that they will comply with the TfL Code of Conduct, including not operating in boroughs without agreement and promptly removing any bikes left in those boroughs
 - i. Sharing data with the City Corporation on a monthly basis, including:
 - Origins and destinations of all trips that start or finish in the Square Mile
 - Total number of hires each hour
 - Total number of hire cycles present in the City each hour
 - Total distance travelled within the City by all hire cycles
 - Number of complains and requests to remove bikes received by the operator
 - Number of times bikes have been left outside agreed parking areas
 - Response times for dealing with complaints or bikes left outside of agreed areas
 - Anonymised and aggregated demographic data, if collected by the operator and in accordance with GDPR
26. We will run an open call for operators to participate in the trial and invite all those who meet the selection criteria to take part. An open and transparent process is necessary as, while we are not appointing an operator to provide a service for the City Corporation, the granting of permissions and selection of operators to take part in the trial should be considered fairly. We will work with City Procurement to manage the trial selection process to ensure it does not affect any future arrangements should the trial prove successful and a more permanent approach to dockless cycle hire be agreed.

27. It is proposed that the approval of the final criteria for participation in the trial and the selection of operators should be delegated to the Chairmen and Deputy Chairmen of the Planning & Transportation Committee and the Streets & Walkways Sub Committee. This will allow the trial to start in May.
28. The current policy on dockless cycle hire does not allow operators to deploy bikes within the Square Mile. It will be necessary to suspend this policy to allow the trial to proceed.
29. The City Corporation's SEOs will continue to report and where necessary remove any dockless cycle hire cycles – whether the operator is part of the trial or not – that are deemed to be causing a nuisance, obstruction or danger. It is proposed that the fee for recovering costs is increased from £82.58 to a maximum of £235. This increase brings the City Corporation's fee in line with TfL's and will ensure the full costs of removing and storing bikes are covered.
30. Officers will continue to work with TfL and London Councils to support the development of a London-wide byelaw to regulate dockless cycle hire operations.

Corporate & Strategic Implications

31. The proposals support the Corporate Plan aims to contribute to a flourishing society, particularly promoting good health and wellbeing, and to shape outstanding environments, by enhancing the physical connectivity of the City.
32. The draft Transport Strategy (Proposal 28) sets out our approach to improving cycle hire in the Square Mile. This includes ensuring that dockless cycle operators restrict their users from parking outside designated areas and quickly remove cycles that are not parked in these areas. The need for designated parking areas is also included in Proposal 17: Keep pavements free of obstructions.
33. Proposal 28: Improve cycle in the City received high levels of support in the consultation, with an average score of 4.1 out of 5. Of those who provided comments, 7 people and 7 organisations supported the proposal and made no comments for changes including Sustrans, the City of London Accessibility Group and London Living Streets. 5 people and the Alliance of British Drivers opposed the proposal without making any suggestions for change.
34. We received 10 comments with requests to go further in the delivery of the proposal, including stricter regulation of dockless cycle hire, introducing non-standard cycle hire services, and other minor requests. In addition, we received 51 comments on Proposal 17 supporting the introduction of designated parking bays for dockless bikes. 32 comments on Proposal 17 did not support designated parking areas as these would remove the flexibility and convenience of dockless cycle hire.
35. There is a possible reputational risk to the City Corporation if innovative approaches to enable more cycling and increasing sustainable and healthy transport modes are not carefully considered. There are also possible reputational risks if potential adverse impacts of dockless cycle hire operations are not carefully managed.

Legal and financial implications

36. Legal implications: The City Corporation has no powers to remove bikes that are parked on City streets unless they are causing an obstruction, nuisance or danger to the public, and operators do not require consent or a licence from the local authority for its users to cycle within the City.
37. However, in terms of proactively authorising the placing of cycles for hire on the highway by operators, the City as highway authority can only act if it has a statutory power to do so. Section 115E of the Highways Act 1980 empowers the authority to grant a person permission to provide services for the benefit of the public on the highway. Where this is for a purpose which results in the production of income consent from frontagers is required. Permission may be subject to such reasonable terms and conditions as the authority thinks fit. All other legal implications regarding dockless cycles remain as previously reported. The previous advice is reproduced in Appendix 3.
38. Financial implications: Operators will be required to meet any costs for additional infrastructure required to facilitate the trial, for example temporary markings to indicate parking areas.
39. Managing dockless cycle hire as outlined in paragraph 18 is not expected to require additional SEO resource but does place an additional requirement on officers to report and potentially remove bikes. To date, dockless cycle hire has generated relatively few calls to the City Corporation's contact centre. Call volumes may increase as a result of the trial creating a more direct association of the City Corporation with dockless cycle hire. These impacts will be monitored through the trial.
40. Costs may be incurred if the City Corporation has to remove bikes deemed to be causing a danger, nuisance or obstruction from the streets in default of the operator removing them. Removal and storage costs would be incurred in these circumstances and will be recovered through the proposed increase in recovery fees.

Health Implications

41. The proposals would support cycle hire facilities in the City. This will encourage active travel within central London, and potentially shift journeys from short taxi, private hire and public transport trips, with associated benefits to air quality and public health.

Equality Implications

42. The proposals to improve the management of dockless cycle hire and to encourage considerate use/parking of bikes will help mitigate adverse impacts for vulnerable road users (e.g. visually impaired, wheelchair users). This is consistent with the public sector equality duty.

Conclusion

43. The proposed trial will allow the City Corporation to test the effectiveness of additional controls that are likely to become available should a London-wide byelaw be adopted. The results of the trial will be used to inform the City Corporation's long-term approach to dockless cycle hire and the application of any proposed byelaw within the Square Mile. If approved, the trial is expected to start in May.

Appendices

- Appendix 1 – City of London Dockless Cycle Hire Policy
- Appendix 2 – Mobike's central London operating area, February 2019
- Appendix 3 – Legal implications: Advice from the Comptroller and City Solicitor
- Appendix 4 – Government response to written question on powers to regulate dockless cycle hire

Background Papers

Dockless Cycle Hire, Planning & Transportation Committee, 3 October 2017

Dockless Cycle Hire Review, Planning & Transportation Committee, 21 May 2018

Dockless Cycle Hire Review, Planning & Transportation Committee, 11 September 2018

TfL Dockless bike share code of practice <http://content.tfl.gov.uk/dockless-bike-share-code-of-practice.pdf>

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Appendix 1 – City of London Dockless Cycle Hire Policy

As adopted by the Planning & Transportation Committee on 3 October 2017.

The City of London Corporation recognises the role that well-organised dockless cycle hire schemes can play in providing low-cost public access to cycles for short urban journeys and endorses the Dockless bike share code of practice (“the Code”).

Operators are expected to follow the requirements and recommendations of the Code.

While the City of London is likely to be a popular destination for trips undertaken by dockless cycle hire, the street layout and extremely high footfall in the City means that highway in the City is an unsuitable location for dockless cycle hire operations to be based. This means that no operator should directly place cycles on City Corporation highway. Cycles should not be placed on any other land in the City without the consent of the property owner. The City Corporation should be informed in advance of any proposals to base cycles on private property within the City.

The City Corporation will engage with operators wishing to operate dockless cycle hire schemes, and users of the schemes may leave the cycles in appropriate locations on City streets, with these cycles then available for public hire, subject to cycle hire operators’ compliance with the Code and the City Corporation Policy Statement.

Cycles belonging to operators not complying with the Code and causing danger, obstruction or nuisance will be removed by the City Corporation and operators will be liable for costs as set out in the Code.

Operators wishing to run a dockless cycle hire scheme in the City of London should contact the Strategic Transportation team to discuss their proposals.

Appendix 3 – Legal implications: Advice from the Comptroller and City Solicitor

Statutory duties

The City Corporation has a duty under s.130 of the HA 1980 to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority.

It also has a network management duty under s.16 of the Traffic Management Act 2004. This requires it to manage its road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives:

- a. securing the expeditious movement of traffic on the authority's road network; and
- b. facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

Under section 122 of the Road Traffic Regulation Act 1984 local authorities are under a duty to exercise functions conferred on them under that Act so far as practicable, having regard to matters specified in subsection (2), to secure the expeditious, safe and convenient movement of traffic (including pedestrians).

The City Corporation is also subject to the public sector equality duty under section 149 of the Equalities Act 2010. This means that in the exercise of its functions it must have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This includes removing or minimising disadvantages suffered by people due to their protected characteristics (such as visual or mobility disabilities).

An unmanaged proliferation of bikes on the highway arising from dockless bike hire schemes may compromise compliance with the above statutory duties.

Statutory powers to deal with bikes on highway

Dockless cycle hire schemes which do not necessitate any infrastructure being placed on the highway fall outside the existing legislative framework and do not need the City Corporation's consent to operate in the City. However, there are some existing statutory powers available where bikes are left so as to cause an obstruction, nuisance or danger.

1. Section 137 HA 1980 – If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding Level 3 on the standard scale (currently up to £1000.00.)
2. Section 148(c) HA 1980– if, without lawful authority or excuse a person deposits anything whatsoever on a highway to the interruption of any user of

the highway he is guilty of an offence and liable to a fine not exceeding Level 3 on the standard scale.

3. Section 149 HA 1980 – if anything is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited there to remove it forthwith. In the event of non-compliance, a court order may be obtained authorising the removal and disposal of the offending item. If the highway authority has reasonable grounds for considering the item constitutes a danger (including a danger caused by obstructing the view) to users of the highway and ought to be removed without the delay of seeking a court order it can remove the item forthwith and, ultimately, seek a court order for its disposal.

Street trading and ‘waste’

Consideration has been given to whether the provision of dockless cycles for hire is caught by local legislation which makes it unlawful for any person to engage in unauthorised street trading in the City. “Street trading” is defined in the City of London (Various Powers) Act 1987 to mean the selling or exposing or offering for sale of any article or thing in a street. However, dockless cycle hire schemes involve bikes being available on the highway (or on private land with the consent of the owner) for temporary hire by members of the public, with payment being made via an App, and no person in the street engaged in the hiring out of the bikes. As the 1987 Act prohibits a person from selling etc. items in the street, not the temporary hiring of bikes in the way proposed which is more in the nature of a service (and not dissimilar to the existing Santander cycle hire scheme except that there are no docking stations), the activity would not amount to unauthorised street trading.

Consideration has been given to whether definitions of “waste” or “litter” in legislation apply. It is considered that these terms are not intended to cover bicycles left temporarily on the highway and which are in use for the benefit of the operators and their customers and officers are not aware of any decisions on this point. It is not considered that this adds significantly to the City’s statutory powers to deal with bikes on the highway.

Regulation by making byelaws

Government guidance states that byelaws are considered measures of last resort after a local council has tried to address the local issue the byelaw applies to through other means. A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem. Byelaws should always be proportionate and reasonable.

It follows that there is a risk that the case for making a byelaw to regulate dockless bike hire could be undermined if all bikes on City streets were to be classed as obstructions and removed under existing powers. This would not prevent the application of the Street Obstructions Policy as proposed.

In relation to the activities of other local authorities in this area, it is understood by City officers that action is proposed to be pursued through a proposed London-wide byelaw.

TfL and London Councils have proposed establishing a regulatory framework for dockless bike hire schemes by way of a London-wide byelaw as the Boroughs have power to make byelaws for good rule and government under section 235 of the Local Government Act 1972. This would necessitate each authority delegating their byelaw-making powers to London Councils' TEC. The byelaw would then be made by way of the new simplified procedure introduced by Regulations which replaced the requirement for Government confirmation of the byelaw.

(However, the City Corporation has a different power to make byelaws for good rule and government contained in the City of London (Various Powers) Act 1961 to which the new simplified procedure does not apply. The City Corporation's participation in London-wide byelaw arrangements may therefore require a separate byelaw (which would need to be confirmed by the relevant Secretary of State) to interface with the TEC byelaw as part of the London-wide controls).

Liabilities

In the event of loss, injury or damage being caused by the cycles, the person responsible would depend on the circumstances of each case. For example, if a cycle had remained in a dangerous position for days without the highway authority taking steps despite complaints, some liability would be likely to rest with the highway authority. If an accident occurred a few moments after the cycle was left in a dangerous position and the highway authority had no reasonable opportunity to identify and remedy the danger, it is unlikely any liability would rest with the highway authority, and therefore would be more likely to rest with the user and/or operator. In addition, the steps proposed to secure the co-operation of operators in ensuring safe practises would help demonstrate that the City is taking reasonable measures consistent with its responsibilities.

Appendix 4 – Government response to written question on powers to regulate dockless cycle hire

Asked by Stephen Morgan, MP for Portsmouth South:

To ask the Secretary of State for Transport, what powers local authorities in England have to regulate bike share schemes within their boundaries.

Answered by Jesse Norman, Parliamentary Under Secretary of State for the Department for Transport (22 November 2017):

There are no specific powers relating to bike-share schemes, however shared bicycles are subject to the same legal requirements and byelaws as other bicycles, and local authorities have powers to act if they are causing an obstruction or nuisance. The Department is discussing with various stakeholders the possible need for an agreed consistent national standard for bike share schemes to help ensure that they are introduced and managed appropriately.