

Report – Planning and Transportation Committee

Dockless Vehicle Hire Byelaw

To be presented on Thursday, 10th October 2019

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

SUMMARY

This report seeks approval to delegate to London Councils' Transport & Environment Committee (TEC) the authority to exercise the City Corporation's byelaw-making function for the purpose of regulating dockless vehicles on the highway and/or public places by way of an addition to the existing TEC constitution, as outlined in the recommendations below.

Dockless Cycle hire schemes fall outside existing legislative frameworks and the City Corporation does not have powers to prevent dockless cycle hire schemes from operating in the City.

The lack of powers to manage dockless cycle hire operators has been recognised by TEC and Transport for London (TfL). In response, and following legal advice, TfL and London Councils have proposed a pan-London byelaw supported by an updated Dockless Vehicle Hire Operator Code of Practice.

TEC does not consider it practicable for the same Byelaw to be made independently by 33 London Local Authorities and is therefore seeking authority from all London Local Authorities and TfL to amend TEC's constitution to enable TEC to make a pan-London byelaw on the authorities' behalf.

RECOMMENDATION

Members are asked to resolve to delegate authority to London Councils' Transport and Environment Committee to exercise the following functions by way of an addition to the Part 3(D) Functions in the LC TEC agreement, inserting a new paragraph 2(c) as follows:

"(c)(i) the making of byelaws under section 235 of the Local Government Act 1972 (and, in respect of the City of London Corporation, under section 39 of the City of London (Various Powers) Act 1961) for the purpose of regulating dockless vehicles on the highway and/or public places (including by making it an offence for a dockless vehicle operator to cause or permit their dockless vehicle to be left on the highway or public place other than in an approved location), including taking all related steps to promote, make, amend and revoke any such byelaw.

(c)(ii) The exercise of powers under Section 1 of the Localism Act 2011 for the purposes of giving effect to (i) above, including but not limited to oversight and management of the arrangements (but excluding prosecution or other enforcement).

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. Dockless cycle hire has been operating in London since autumn 2017.
2. 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.
3. The lack of powers to manage dockless cycle hire operators has been recognised by London Councils' Transport & Environment Committee (TEC) and Transport for London (TfL). In response, and following legal advice, TfL and London Councils have proposed a pan-London byelaw supported by an updated Dockless Vehicle Hire Operator Code of Practice.
4. The London Boroughs and the City Corporation have power to make byelaws under section 235 of the Local Government Act 1972 and section 39 of the City of London (Various Powers) Act 1961 respectively, which provide a legislative tool for boroughs to use for the 'suppression of nuisances'.
5. The draft byelaw text is available in Appendix 1. The byelaw defines several terms used in the draft Byelaw currently undefined in legislation (e.g. a dockless operator). It states that the byelaw applies throughout Greater London, sets out minimum safety standards for bikes, requires all bikes to be chipped to ensure their whereabouts can always be tracked, requires all bikes to be left (whether by dockless operators or their customers) only in places agreed by the relevant local authority, and makes it an offence for dockless operators to place or allow their bikes to be parked anywhere other than at a location agreed by the local authority; and sets a penalty for a dockless operator committing the offence.
6. TEC and TfL envisage that dockless parking bays would not be exclusive to specific operators but would be open to any byelaw-compliant dockless company wishing to use them. The byelaw has been drafted in this way because:
 - a. users want to make journeys irrespective of borough boundaries, meaning that separate borough by borough arrangements and operator selections are not conducive to encouraging cycling; and
 - b. the legislative tools used to draft the byelaw text did not necessarily provide powers for boroughs to regulate operators directly.
7. The drafted byelaw wording covers dockless bikes and e-bikes and could also apply to electric kick scooters or other 'micromobility' vehicles should they become legal and available for hire on London's streets.
8. Local issues, such as how many or how few parking places to approve and where they should be located, are all left for individual authorities to decide depending on their local circumstances. The City Corporation or a borough could also decide not to allocate parking on streets they manage, although TfL could technically still do so on the Transport for London Road Network.

9. TEC is looking to clarify and strengthen legal and operational aspects of the byelaw through drafting supporting byelaw text or guidance on topics including:
 - a. How enforcement will be undertaken and managed, including the amount of time given to operators to relocate inappropriately parked bikes;
 - b. The collection, management and provision of data that informs dockless customers and other highway users where they can and can't park dockless vehicles;
 - c. Proposed procedures for designating or approving parking spaces;
 - d. How boroughs may charge operators for the use of the parking spaces they make available;
 - e. How CoMoUK accreditation can play a role in further managing dockless operations in London (CoMoUK runs accreditation schemes for car club and bike share operators); and
 - f. How parking permitting, summary fines and other financial controls will be applied and issued.
10. TfL will also update its Dockless Bike Share Code of Practice document following further development of the above topics.
11. Subject to approving the delegation of powers to TEC approval of the final wording of the byelaw will be delegated to TEC membership, which includes the Chair of the Planning and Transportation Committee. Amendment and revocation of the byelaw would also be delegated, but this would be a matter for consideration by the TEC membership, which includes representatives of each London authority. It is envisaged this delegation would be used in the event of adjustments being required as the scheme embedded and evolved.
12. Consultation with affected and interested parties on the byelaw is likely to occur in the autumn, with the aim of then making the byelaw as quickly as possible. This is dependent on the powers being delegated, amongst other things, so no fixed timetable is available.
13. The City Corporation's current dockless trial will conclude before the byelaw is adopted. A report will be brought to the Planning and Transportation Committee in December 2019 on the outcome of the current trial with recommendations for interim arrangements prior to the introduction of the byelaw.

Delegation of powers to TEC

14. TEC does not consider it practicable for the same Byelaw to be made independently by 33 London boroughs. The making of the pan-London byelaw requires each of the 33 London local authorities participating in the TEC joint committee arrangements to delegate the exercise of additional functions to the joint committee, which requires the TEC constitution (Governing Agreement, dated 13 December 2001 (as amended)) to be varied. Members are asked to delegate the authority to make this byelaw to TEC.

Corporate & strategic implications

15. Well managed dockless cycle hire in London as proposed under the new byelaw has the potential to support the Corporate Plan aims to contribute to a flourishing society, particularly promoting good health and wellbeing, and to shape outstanding environments by enhancing connectivity to the City.
16. The 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 byelaw would help to deliver this proposal.

Legal implications

17. Section 39 of the City of London (Various Powers) Act 1961 empowers the City Corporation to make byelaws for the good rule and government of the whole, or any part, of the City and for the suppression of nuisances therein. The confirming authority for such byelaws is the Secretary of State. The byelaws cannot duplicate existing legislation in force in the City and must be proportionate and reasonable.
18. Not delegating powers would impact the ability to effectively regulate dockless cycle hire London-wide and would leave each London authority seeking to address the issues piecemeal. There are currently no other legislative options to effectively regulate dockless cycle hire available or in development.
19. For TEC to be able to make the byelaw the LC TEC Agreement needs to be amended as local authorities' functions relating to the making of a pan-London byelaw for regulating dockless vehicles are not currently delegated as functions of LC TEC. The proposed delegation would allow LC TEC to make and promote a pan-London byelaw to regulate dockless vehicles on the highway and/or public places.
20. The decision to delegate the making of the proposed bylaw to the TEC would be consistent with the City Corporation's responsibilities to secure the expeditious, convenient and safe movement of traffic and the provision of safe and adequate parking facilities (s.122 RTRA 1984) and traffic management duty (s.16 TMA 2004).
21. Officers will continue to explore the potential for primary legislation to further regulate the dockless vehicle industry with TfL, London Councils and central Government. This will be the first time that byelaw making has been delegated, this being considered the most appropriate means of regulating dockless cycle parking given that primary legislation is not currently envisaged by central government.
22. In respect of the fines provided for (not exceeding Level 2 i.e. £500) in the event of a successful prosecution this would be a matter for the magistrate's court.

Financial implications

23. Dockless operators breaching the byelaw will be liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500), reducing the likelihood of inappropriate parking.
24. There will be costs associated with designating and marking out parking areas and the scope for charging for parking permits is currently being explored.

Health implications

25. Well managed dockless cycle hire has the potential to 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. The byelaw will support these aims.

Equality Implications

26. The introduction of the byelaw and allocation of dedicated parking areas will help mitigate adverse impacts for vulnerable road users (e.g. visually impaired, wheelchair users). This is consistent with the public sector equality duty.
27. A statement assessing the impacts of the proposal and the proportionality of the regulatory burden will be prepared prior to the presentation of the byelaw to the Minister of State. This impact assessment will include an Equality Impact Assessment.

Conclusion

28. Dockless cycle hire has the potential to enable more journeys to, from and within the Square Mile to be made by bike, and the City has proved to be a popular destination for users. It also represents a challenge, as users can leave bikes anywhere, potentially obstructing pavements. Introduction of the pan London byelaw will therefore allow us to manage this new type of mobility mode appropriately.
29. The lack of powers to manage dockless cycle hire operators has been recognised by London Councils' Transport & Environment Committee (TEC) and Transport for London. In response, and following legal advice, TfL and London Councils have proposed a pan-London byelaw supported by an updated Dockless Vehicle Hire Operator Code of Practice.
30. This draft byelaw is available in Appendix 1 and detailed discussions have been held on its precise wording. While these discussions have yet to conclude, the draft text will help support well-managed dockless operations in the City and across London.

Appendix

- *Appendix 1: The Greater London Dockless Vehicle Hire Byelaws – Draft Byelaw*

All of which we submit to the judgement of this Honourable Court.

DATED this 1st day of October 2019.

SIGNED on behalf of the Committee.

Deputy Alastair Michael Moss
Chair, Planning and Transportation Committee