

Notice of Non-key Executive Decision

Subject Heading:	Delegation of powers to London Councils to create a pan-London dockless bike Byelaw
Cabinet Member:	Councillor Damian White, Leader of the Council
SLT Lead:	Barry Francis, Director of Neighbourhoods
Report Author and contact details:	Martin Day, Senior Transport Planner, 01708 432869 martin.day@havering.gov.uk
Policy context:	Mayor's Transport Strategy (2018) Havering Local Implementation Plan (2019) June 2019 London Councils Transport and Environment Committee (LCTEC) Meeting
Financial summary:	There are no direct financial implications from this report.
Relevant OSC:	Environment
Is this decision exempt from being called-in?	No

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The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input checked="" type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. This reports sets out the proposed introduction by London Councils (at the request of Transport for London) of a new Byelaw concerning the regulation of dockless bicycle hire schemes in London.
2. Dockless bike schemes are those for hire bikes that are not “docked” like the “Santander” bikes that operate in central London, but currently can be hired and left post hire at unspecified locations.
3. In recent years there has been an increase in the number of dockless bike operators across London. However this has on occasion resulted in bikes being left in unsuitable locations.
4. London Councils are proposing to seek delegated authority from London Boroughs for London Councils to prepare and promote the Byelaw.
5. The extent of dockless bike hire schemes and the enforcement of the Byelaw in a borough would be a matter for local decision making and control, at the discretion of the borough.
6. This report sets out the background to this matter and the issues for boroughs, including Havering.
7. It is recommended that Full Council should:
 - a. support the introduction of the pan-London Byelaw for regulation of dockless vehicles on the highway and/or public places in Havering substantially in the form set out in the Appendix 1 to this report;
 - b. delegate authority to the London Councils’ Transport and Environment Committee to make the dockless vehicle Byelaw substantially in the form set out in the Appendix 1 to this report;
 - c. authorise the Director of Neighbourhoods to sign the form of delegation set out in Appendix 2 on behalf of the Council.

AUTHORITY UNDER WHICH DECISION IS MADE

8. The following elements of the Council's Constitution apply.

Council's Constitution July 2019 Part 2 – Executive Functions

The Leader of the Council is responsible for arranging for the exercise of all executive functions and may by way of written notice delegate Executive Functions to:

1. Cabinet
2. A committee of the Cabinet
3. Individual Cabinet Members
4. Staff
5. Joint Committees

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And may exercise any Executive functions personally provided notice is given to the Proper Officer.

STATEMENT OF THE REASONS FOR THE DECISION

Background

9. The Santander bike-hire scheme operated by the Mayor of London is long established and generally well understood. It relies on registered users making use of bikes that they pick up from, and return to, designated locations across London. This provides certainty for potential and actual users. It also has safety advantages for the other users of streets / spaces and avoids unwanted street 'clutter'.
10. There are currently around five dockless bike-hire operators in London, these schemes do not rely on designated collection and return points, and no on-street docking infrastructure is required. Instead, bikes hired from these operators can be collected in theory from any location.
11. When the user has finished with the hired bike, it can be left and then re-hired using GPS and a phone application. Bike hire schemes operated in this manner are termed 'dockless'. They offer a convenient cycle hire option making cycling more accessible and they complement the existing public transport network in a given location.
12. Whilst Dockless bike operators are prevalent in a number of London boroughs, there are currently no such operators within Havering.
13. The dockless hire arrangement may provide users with a greater degree of flexibility compared to the scheme operated by the Mayor of London. However, in some cases it results in bikes being left in unsuitable locations and / or parked inconsiderately.
14. Some of the key issues raised by London Boroughs over dockless bikes have included, street clutter, high concentrations in certain areas, parking or abandonment of cycles on private property, road safety concerns, and the potential for antisocial behaviour where there are a large number of these facilities.
15. Currently there is no legislation passed by central government giving boroughs the enforcement powers they require to control the areas where dockless bikes can and cannot be parked. This resulted in a situation a few years ago where many dockless bikes were left in a few London Boroughs without prior discussion or approval from the relevant Local Authority.
16. In order to prevent future situations where dockless bikes are left on the public highway without the knowledge or permission of the respective local authority, Transport for London through London Councils have proposed the introduction of a pan-London Byelaw for controlling the parking of 'dockless' bikes hired from bike-hire operators.

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17. Such a Byelaw will give London Boroughs the power to regulate the use of dockless bikes and would prohibit bike operators from parking dockless bikes other than at parking spaces that have been approved by the respective Local Authority.

What is being proposed?

18. As a result of the introduction of dockless bikes in London and the emerging issues around them, London Councils Transport and Environment Committee (LC TEC) has agreed to take on the promotion and making of a pan-London Byelaw.
19. London Boroughs are now being asked to provide London Councils TEC with the delegated authority to take on the promotion and making of the pan-London Byelaw.
20. In order to implement such a Byelaw, first amendments need made to the London Councils TEC Agreement in support of the proposed Byelaw for the regulation of dockless bikes in London. The Byelaw will only be able to be administered if all London Borough sign up to it. It is understood 31 of the 33 London Boroughs have so far approved delegation of the Byelaw to London Councils.

What does the Byelaw cover?

21. The proposed Byelaw covers dockless bikes and electric bikes. Local issues such as how many or how few parking places to approve for such facilities and where they should be located, are all left for individual authorities to decide depending on their local circumstances. Enforcement of the Byelaw would also be a matter for local decision-making and control, at the discretion of each borough.
22. If the Byelaw is approved, each London Borough will be able to decide whether to identify appropriate parking spaces on the highway for dockless bikes to be located, should any operators approach the Council to do so, or to not offer any such parking.
23. A copy of the draft Byelaw can be found in Appendix 1 to this report.
24. A copy of the delegation form that each London Borough needs to sign and return to London Councils can be found in Appendix 2 to this report.

Implications for Havering

25. The proposed Byelaw would guard against the established practice by some operators of placing bikes at random locations and having no agreed areas in which to park the bikes before and after use. This leads to unwanted street clutter, health and safety issues, and conflict with pedestrians.
26. It is considered that the proposed introduction of the Byelaw should be supported. Having such a Byelaw in place will ensure that in the event operators begin hiring activity in Havering, this is done both with the agreement of the Council and that agreed locations from which they can operate are also specified.

Next Steps

27. Transport for London through LCTEC are aiming to get the Byelaw in its current form agreed by all Boroughs at the LCTEC meeting scheduled for 15 October

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2020, following the delegated approval from each London Borough. There will, however, be further opportunity post that date for Boroughs to comment on the Byelaw before it is passed.

OTHER OPTIONS CONSIDERED AND REJECTED

28. The option of not delegating London Councils authority to prepare the London wide Byelaw was rejected. Having a London-wide Byelaw in place will prohibit dockless bikes operators from deploying dockless bikes other than at agreed locations with the local authority and will create a consistent regime across London.

PRE-DECISION CONSULTATION

29. Not applicable.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Martin Day

Designation: Senior Transport Planner

Signature: *Martin Day*

Date: 27/08/2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

30. Section 235(1) of the Local Government Act 1972 ("1972 Act") enables local authorities to make Byelaws for the good rule and government of the whole or any part of the borough for the prevention and suppression of nuisances provided that the matter to be regulated by the Byelaw is not the subject of pre-existing statutory provision or that such provision is in prospect. The report makes clear that there is no such provision.
31. The procedure for making Byelaws is set out at section 236 of the 1972 Act. The power to delegate that Byelaw making function to London Councils is contained in section 101(5) of the 1972 Act which provides that two or more local authorities may discharge any of their functions by a joint committee. The London Councils Transport and Environment Committee ("TEC") is such a joint committee that has been appointed by the 33 London local authorities.
32. Each London Council is effectively being asked to determine whether it wishes to introduce a Byelaw that would, inter alia, compel dockless operators to use designated parking spaces designated for that purpose by the Council and to prohibit vehicles being left otherwise than at specified and to determine that the actual making of that Byelaw is delegated to the TEC. A delegation must be mutual and London Councils would be required to formally accept this delegation. This is ultimately achieved by London Councils amending Schedule 2 of the TEC Governing Agreement which identifies all the functions that have been delegated to it.
33. The specific amendment to Schedule 2 is to amend Part 3(D) of that Schedule by inserting a new paragraph 2(c) which will read 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)"*
34. Any change to Councils Byelaws, including the delegation proposed by this report will require the approval of Full Council.

FINANCIAL IMPLICATIONS AND RISKS

35. There are no direct financial implications as a result of this decision. Once London Councils have agreed the Byelaw, London Boroughs will have the powers to enforce it within their own borough. Controlling the deployment of dockless bikes in and around the borough will result in cost avoidance in relation to the collection and disposal of clutter.

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**HUMAN RESOURCES IMPLICATIONS AND RISKS
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

36. There are no HR implications as a result of this decision.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

37. The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

38. The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

39. The Byelaw will allow the Council to have control of the deployment of the dockless bikes should operators wish to deploy them in Havering. The dockless bikes themselves can be hired by anyone that wishes to ride them.

BACKGROUND PAPERS

40. The draft Byelaw and London Councils delegation form are attached as an Appendix 1 and Appendix 2 of this report.

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Proposal NOT agreed because

Details of decision maker

Signed

Name: Councillor Damian White

Cabinet Portfolio held: Leader of the Council

CMT Member title: Barry Francis – Director of Neighbourhoods

Head of Service title: Sue Harper – Assistant Director of Environment

Other manager title: Nicolina Cooper – Group Manager Highways, Traffic and Parking

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____

Appendix 1

The Greater London Dockless Vehicle Hire Byelaws

Draft Bye Law - 5 February 2020

1. General Interpretation

(1) In these byelaws:

“Dockless Parking Space” shall mean:

- (a) a parking place on the highway; or
- (b) a parking area in any Public Place

where a Local Authority or Transport for London has authorised Dockless Vehicles to be left.

“Dockless Vehicle” means any transport device (whether mechanically propelled or not) which is made available for hire through a Dockless Hire Scheme and which is a pedal cycle, electrically assisted pedal cycle or any similar class of transport device which may be lawfully used on the highway.

“Dockless Hire Scheme” means a scheme offering Dockless Vehicles for hire - (other than a scheme offering Dockless Vehicles for hire wholly from on-street infrastructure constructed and installed for their use) where the contract for hire is entered into without the simultaneous physical presence of the Dockless Operator and the hirer.

“Dockless Operator” means any person offering Dockless Vehicles for hire through a Dockless Hire Scheme.

“Public Place” means an area of highway or other open land (whether or not it is fenced) under the ownership or control of a Local Authority or Transport for London.

“Local Authority” means a London Borough Council or the Common Council of the City of London.

(2) A reference to:

- (a) legislation (whether primary or secondary) includes a reference to the legislation as amended, consolidated or re-enacted from time to time and, in the case of regulations, includes a reference to any regulations which replace the regulations referred to;

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(b) a “person” includes a natural person and a corporate or unincorporated body;

(c) words in the singular include the plural and vice versa.

2. Application

These byelaws apply throughout Greater London.

3. Safe condition of Dockless Vehicles.

(1) No Dockless Operator shall offer a Dockless Vehicle for hire unless it is safe.

(2) In determining whether a Dockless Vehicle is safe regard shall be had to whether the Dockless Vehicle complies with, or the Dockless Operator has complied with, applicable provisions of:

(a) in the case of a pedal cycle, the Pedal Cycles (Construction and Use) Regulations 1983 and the Road Vehicles Lighting Regulations 1989;

(b) in the case of an electrically assisted pedal cycle, the Pedal Cycles (Construction and Use) Regulations 1983, the Road Vehicles Lighting Regulations 1989 and the Electrically Assisted Pedal Cycle Regulations 1983; or

(c) in all cases, any statutory requirements applicable to a Dockless Vehicle of that class.

4. Identification and management of Dockless Vehicles

(1) No Dockless Operator shall offer a Dockless Vehicle for hire unless:

(a) it has an individually identifiable asset number visibly displayed;

(b) it is fitted with a device which ensures the location of the Dockless Vehicle can be identified at all times by the Dockless Operator, the local authority in whose area the Dockless vehicle is situated and Transport for London, and the device is retained in operation.

(2) No Dockless Operator shall offer a Dockless Vehicle for hire unless the hirer is prevented from leaving the Dockless Vehicle on any highway or other Public Place other than at a Dockless Parking Space.

(3) For the purposes of complying with paragraph 4(1)(b) and 4(2), the Dockless Operator shall make available to Local Authorities and Transport for London real time data via an application programming interface for each Dockless Vehicle that is available for hire or has been hired through its Dockless Hire Scheme.

5. Parking of Dockless Vehicles

No Dockless Operator shall cause or permit a Dockless Vehicle to be left on any highway or Public Place other than at a Dockless Parking Space.

6. Penalty

Any Dockless Operator offending against these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Appendix 2

London Councils Delegation Form

To: London Councils
59 ½ Southwark Street
London
SE1 0AL
FAO: Paulius Mackela

I.....[name and position of authorised person]

on behalf of..... [name of authority]

hereby confirm that my authority has resolved 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, 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)

Signed

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Date

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