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13 TEC DELEGATION FOR THE REGULATION OF DOCKLESS VEHICLE HIRE SCHEMES (Pages 3 - 10)

Additional information considered by the Environment and Community Services PDS Committee on 13th November 2019 is attached.

Copies of the documents referred to above can be obtained from
<http://cde.bromley.gov.uk/>

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London Councils TEC Delegation dockless byelaw – Explanatory note

After detailed discussions at London Councils TEC, it has been agreed that London Councils should seek amendments to the London Councils' Transport and Environment Committee Agreement (LC TEC Agreement) that would allow London Councils TEC to widen the scope of its current ability to make and promote the proposed pan-London byelaw on boroughs' behalf to prohibit bike operators from parking dockless bikes other than at approved parking spaces.

We are aware that some boroughs might have questions about the delegation process and have therefore developed this explanatory note to provide further information.

At the meeting on 21 March 2019, LC TEC agreed that the correct future approach for dockless bike sharing is to move away from the status quo, where Boroughs reach individual agreements with specific operators, and instead move to borderless operations throughout Greater London. As an existing joint committee representing all of London's local highway authorities, LC TEC has agreed that it is a suitable body to undertake both the promotion and making of such pan-London byelaw.

For TEC to be able to do this, however, the LC TEC Agreement needs to be amended. At the meeting on 13 June 2019, LC TEC agreed to start the process of amending the LC TEC agreement to delegate the boroughs' functions relating to making and promoting the pan-London dockless byelaw to TEC. The reason the Agreement needs to be amended is because none of the local authorities' functions relating to the making of a pan-London byelaw for dockless bikes parking are currently delegated as functions of LC TEC and the Committee therefore does not currently have the legal authority to undertake this function on behalf of the London local authorities.

The proposed delegation is highly restricted. The delegation is not a transfer of the authorities' powers in respect of dockless bikes parking to LC TEC but allows for LC TEC to make and promote a pan-London byelaw. There was no provision for this included when the LC TEC Agreement was first established.

Signing the amendment to the LC TEC Agreement does not mean any loss of control of your assets or powers. Every authority can be assured that the extent of dockless bike parking and the enforcement of the byelaw would be a matter for local decision-making and control, at the discretion of each London borough.

However, without all authorities signing the variation to the LC TEC Agreement the Committee would be unable to take on the promotions and making of this new byelaw. We are therefore asking authorities to go through their individual processes and return a signed declaration by **5 December 2019**.

A copy of the draft byelaw is also enclosed with the delegation document and this clarification note. Please could you provide any further feedback on the text of the byelaw no later than **6 September 2019**, to allow further changes to be considered. We intend to ask LC TEC members to sign off the wording of the byelaw at the TEC meeting on 10th October 2019. This will enable other essential procedural parts of the process for making the byelaw to be taken forward while the process of delegating powers continues in parallel.

We hope that this provides more clarity on some of the issues raised and enables you to sign the amendment. If you have any questions about this process, please contact Paulius Mackela on Paulius.Mackela@londoncouncils@londoncouncils.gov.uk or 020 7934 9832. To enable us to track progress, we would also be grateful if you could confirm receipt and provide contact details for the officer who will be leading on this matter for you.

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The Greater London Dockless Vehicle Hire Byelaw: Guidance

Summary

TfL and London Councils have been instructed jointly by the London Councils Transport & Environment Committee (TEC) to develop a new regulatory approach to dockless bike sharing schemes, in light of continued activity in the market, and anticipated further dockless deployments by new operators.

TEC members regard the current operating arrangements (whereby boroughs do deals with individual bike operators) as impractical. Cyclists do not know where borough boundary lines are, and limiting bike use to specific areas of London is not conducive to encouraging cycling overall.

TEC members agree that a more practical approach is to move to a pan-London operating area, but to introduce safeguards to enable boroughs to retain control of how their public space is managed.

Existing legislation does not provide controls for dockless rental schemes, and the Government does not intend to introduce new legislation to regulate these schemes.

So following discussions at the dockless bikes working group and both internal and external legal advice, TEC has endorsed an approach proposed by TfL and London Councils which would see:

- Existing powers used by councils to designate parking spaces specifically for dockless bikes; and
- New regulatory powers (which would be secured by passing a new byelaw) used to compel dockless operators to use designated parking spaces, and prohibit bikes being left anywhere not agreed by boroughs.

The powers to make such a byelaw are in a piece of local government legislation from the 1970s. Boroughs can make byelaws individually using these powers, but in order for a single byelaw to be made, and for it to apply uniformly across Greater London (which is what TEC members want), each London Borough must delegate its authority to make the byelaws to TEC.

When TEC is asked to arrange the delegation of powers, provision should be made at the same time to issue a Section 101 agreement which will enable TfL to enforce the bye-laws on its own road network, as the boroughs can on theirs.

The byelaws have now been drafted. This guidance document accompanies the draft. It sets out how the byelaws would work, explains each section, and provides draft text for the various orders that boroughs may choose to use to designate parking space. The byelaws have been drafted in such a way that they could apply to other types of transport devices, not just dockless bikes. This is for future proofing, as explained below.

We would welcome discussion with borough officers on the bye-laws. Once boroughs are content and the delegation of powers from Boroughs to TEC is under way, TfL and London Councils will begin the compilation of the next documents required, and the initial consultation with industry which will be necessary to secure Secretary of State approval in principle for the bye-laws to be made.

Byelaw Detail

The byelaw includes six key areas. The following explanatory text provides an overview of each section, and clarifies any terminology/sets out what it is trying to achieve.

1. General Interpretation

This section provides legal definitions for a number of currently undefined terms relating to the dockless business model.

- § Dockless Parking Space: this defines what a dockless parking space is and how Local Authorities or Transport for London formally designates spaces. This approach allows Local Authorities to choose whether they want to say that bikes can be left only in specific locations (for example if space is at a premium), or instead agree a more flexible and permissive approach, whereby bikes can be left on certain parts of the highway or other public places except specific “no parking” locations.
- § Dockless Vehicle: this defines what a dockless vehicle is, highlighting how it includes both pedal and pedal assist cycles (e-bikes). In including reference to “any similar class of transport device” the intention is to ensure the byelaw is future proof, so that if other forms of micromobility should come to market (such as electric kick scooters), these too would be captured by the byelaws.
- § Dockless Hire Scheme: this defines what a dockless hire scheme entails, making sure to differentiate it from fixed docking schemes. However, this definition does include bikes which are capable of being locked to physical infrastructure, as opposed to applying exclusively to bikes or other transport devices that are free standing.
- § Dockless Operator: this defines what constitutes a dockless operator. This definition is designed to capture all relevant operators in the market, and compel them to comply with the requirements set out in the byelaw.
- § Public Space: defines public areas of land under the ownership or control of a Local Authority that are eligible for parking by council designation. This could be land both on and off the highway.
- § Local Authority: in the London context this means a London Borough Council, Common Council (i.e. the City of London) and TfL. This is to ensure a common approach to enforcement can be taken by all highway authorities.

2. Application

This section makes clear that the byelaw will apply throughout Greater London to ensure the political mandate from TEC to deliver a borderless and uniform approach is met.

3. Safe condition of Dockless Vehicles

This sets out minimum expectations in terms of safety with Dockless Vehicles. This includes ensuring pedal cycles and pedal assist cycles (e-bikes) comply with relevant safety regulation.

4. Identification and management of Dockless Vehicles

This sets out requirements that all Dockless Operators must ensure their Dockless Vehicles include an individually identifiable asset number, a means of providing the location of the cycle and a means to prevent the hirer from terminating their hire unless in a designated Dockless Parking Space. This is to ensure that bikes and their owners are clearly identifiable at all times for enforcement purposes, that a fleet level overview of bike locations can be maintained, and that customers understand that they must park bikes in an approved place or they will be unable to halt their rental payments. We are

taking further advice on whether in addition, operators could reasonably be asked to ensure the locations of all bikes is provided in real time on an open API.

5. Parking of Dockless Vehicles

This section clarifies that Dockless Operators must ensure their Dockless Vehicles are only parked in designated Dockless Parking Spaces. By having the ability to designate parking spaces, which will be the places Dockless Operators and their customers must use, Boroughs will be able to enforce against irresponsible parking, and better control the management of public spaces. As previously stated, this approach to parking allows Local Authorities either to require bikes only to be left in specific locations, or that they may be left on the highway or public places *except* specific locations.

6. Penalty

This is the final section of the byelaw, and sets out the penalty offence for being in breach of the byelaw.

Additional information

Designating parking spaces/areas

As noted above, we have sought to word the byelaw in order to enable boroughs to make local choices about providing dockless parking, in line with the needs, available space, and political will of the council in question. This should allow boroughs either to designate specific parking places where space is at a premium, or instead allow larger areas to be used for parking, with "no parking" places identified.

We propose that there are 3 potential mechanisms through which this can be achieved:

1. Designating specific dockless parking places by way of an order under Section 45 of the Road Traffic Regulation Act 1984;
2. Alternatively, agreeing in writing that a footpath or pedestrianised section of highway may be used for parking, by way of an order under Section 115E of the Highways Act 1980; or
3. If allowing parking on land which is owned by the local authority (other than highway), permission may be given as by the land owner.

It is important that the authority opts for the appropriate mechanism taking into account the site-specific circumstances. .

The first mechanism, Section 45, will be familiar to borough officers, and requires any spaces mooted for allocation as dockless parking to be subject to consultation and advertisement etc.

The second, Section 115E, cannot be used for designating space on the carriageway, but can be used for designating space on footpaths and/or pedestrianised areas. Where S115E is to be used, any frontagers¹ must consent. This may be disproportionately onerous, depending on the location proposed, but there may be other areas where using S115E is useful.

The final mechanism is based on the authority's powers as landowner. Permission to use land is normally evidenced by licence, and whether this is appropriate will depend on the area proposed.

Taken in combination, these 3 mechanisms should provide boroughs with sufficient flexibility to designate only the space they want to make available for dockless parking. It

¹ Owners of property adjoining the highway

will be important to be precise about exactly what space is made available, however. Where boroughs wish to be permissive and designate large areas for dockless parking, care will still be necessary to exclude areas where leaving dockless vehicles will unacceptably restrict access to properties or appropriate passage of traffic as the operator of any dockless vehicle could rely on "lawful authority or excuse" as a defence to any enforcement against obstructions under Section 137 of the Highways Act 1980 within permitted areas even if the vehicles were parked badly and causing an obstruction.

To make it as simple as possible for boroughs to take a uniform approach to designating space for dockless parking, a template for each type of order is attached to the end of this guidance note. This is included by way of suggestion as to what the approach might look like, for each of the three methods. However, it will be for each Borough to decide which mechanisms are open to it in relation to any area, which is the most suitable, and on the form of wording used.

TfL and London Councils are looking for ways to ensure that cost and drain on officer time is kept to a minimum. This is particularly true with regard to consultation and signage, where we will discuss what the most proportionate approach is with officials at the DfT. We will hold these discussions soon and share our findings, but concluding them should not be a barrier to the byelaw being progressed.

Public information

TfL is launching a new online tool later this year called the Cycling Infrastructure Database. It will show all existing physical cycling infrastructure, and be accessible to boroughs so that new infrastructure can be added. There will also be an accompanying open API to give third parties an overview of cycling infrastructure which will be available under TfL's open data policy.

We expect it will be possible to indicate in the CID where dockless parking has been made available, and for boroughs to update this as and when provision changes. TfL is seeking to ensure that it is quick and simple to see where it is ok to place dockless bikes for hire, and for cyclists to leave them at the end of hires. We hope also to make it simple for Dockless Operators to display this information in their apps to guide customer behaviour.

TfL will provide more information on this in the coming weeks.

Enforcement

Once the drafting of the byelaw is agreed, TfL and London Councils will convene a workshop to discuss enforcement. An even handed approach will be required, because breaching the byelaw will be a criminal offence. Enforcement needs to be accurate, consistent, proportionate, and fair.

We will arrange this workshop shortly.

Charging for Parking

The combination of a) using existing powers to designate spaces/areas; and b) using new powers conferred by the byelaw to compel dockless operators to use those designated parking places, will provide an operational framework for dockless/free floating transport business models, and a level of control currently unavailable to boroughs.

Boroughs already have the right to charge for parking in designated spaces, and this will also apply to dockless parking. The free floating nature of dockless bikes is such that boroughs may wish to work collaboratively to develop a collectively agreed approach to allocating parking permits. This has already been done by a number of boroughs in relation to free floating car clubs.

This will require co-ordination and further discussion, and TfL and London Councils stand ready to assist in any subsequent discussions on the matter.

Timeline

The sooner the requisite powers are delegated by Councils to TEC, the sooner the byelaw can be made. Elements like enforcement detail and parking charges do not feature in the drafting of the byelaw, so the approach to these can be developed in parallel. We aim to request that TEC authorises the delegation process at the June TEC meeting.

Annex - Templates

Illustrative templates for the different mechanisms that Local Authorities can potentially use to create Dockless Parking Spaces are attached. However, it is for each Borough to decide on the appropriate mechanism and on the exact form of wording appropriate to its requirements.

1. S45 (RTRA 1984)

[PLEASE SEE SEPARATE DOCUMENT]

2. S115E (HA 1980)

[PLEASE SEE SEPARATE DOCUMENT]

3. License to use Local Authority Land

[PLEASE SEE SEPARATE DOCUMENT]

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