



PLANNING MALAYSIA:
Journal of the Malaysian Institute of Planners
VOLUME 22 ISSUE 5 (2024), Page 1 – 11

SHORT TERM RENTAL ACCOMMODATION (STRA) AND HOME SHARING: DIFFERENT TERMINOLOGIES TO ADDRESS LEGAL REQUIREMENT OF PLANNING PERMISSION

Nuraisyah Chua Abdullah¹, Ramzyzan Ramly²

¹ *Faculty of Law,*

² *College of Engineering, School of Mechanical Engineering,*
UNIVERSITI TEKNOLOGI MARA, SHAH ALAM, MALAYSIA

Abstract

One of the debates on permissibility of short-term residential accommodation (STRA) is whether the nature of use of the building has significantly changed, with the operation of such business in the building. This led to the issue of whether planning permission is needed as this is a requirement in event of ‘material change of use’ of building. A home may be built as a one-family dwelling, but when it is converted to STRA use, it may be argued that it loses that character and contributes to unauthorized changes in neighbourhood character by intensifying the use both in terms of the number of people who typically use the property at any given time and by the negative impacts associated with frequent turnover. Basically, the main idea of planning permission is to ensure that there are no irregularities emerging from land use and development by individuals such as traffic jams, pollution, nuisance problems, loss of value or even amenities, floods or effects on the neighbourhood and ensures that the new development is suitable for occupation. This article suggests that one possible way to address the ‘change of character’ issue is by differentiating the types of short-term accommodation businesses based on the number of permitted bedrooms, guests, owner occupancy, number of bedrooms, location, and yearly maximum day-cap.

Keywords: short-term residential accommodation, planning permission, change of use, zoning

¹ Corresponding author. Email: nuraisyah@uitm.edu.my

INTRODUCTION

Short-term residential accommodation (herein after referred to as the STRA) is a concept of home sharing where it is a welcome disruption to the traditional tourism economy as it allows a more diverse array of stakeholders to participate in the economy both as providers and consumers. It creates new and sometimes more accessible and affordable forms of tourist accommodation, brings extra income for residents who can rent out their units, creates the ability to absorb extraordinary demand for accommodation by visitors, and contributes to the regeneration of cities. One of the debates on permissibility of STRA is whether the nature of use of the building has significantly changed, with the operation of such business in the building. This led to the issue of whether planning permission is needed as this is a requirement in event of ‘material change of use’ of building.

Legality Of Using Residential Premise for STRAs

In Malaysia, under the Town and Country Planning Act 1976 (Act 172), the local authorities have the right to allow or prohibit owners of properties from carrying out commercial business such as STRA in their properties. Various local authorities use different approaches in addressing this issue, and this is influenced by the fact that every community's needs are different, changing, and the increasing demand of pursuit of quality life and influence of human rights (Meng Lee Lik et al., 2006) The pressing legal issue as regards to legality of operating STRA is whether landlords are allowed to use their properties to operate STRA. This generally arises from the general rule pertaining to property development set forward in Act 172.

Act 172 defines property development as “the carrying out of any building, engineering, mining, industrial or other similar operations in on, over or under land, or the making of any material change in the use of any buildings or other land, or the subdivision or amalgamation of lands” where planning permission needs to be obtained. Subsection 2 (1) of Act 172, planning permission is defined as 'given, with or without conditions, to carry out development. A planning permission is granted by the local planning authority for an area. For areas in a municipal / district councils / municipality, planning permission is issued by the relevant authority of the local planning authority area, under subsection 5 (1) of Act 172. For areas outside of a local authority, planning permission is given by the Town and Country Planning State under subsection 5 (2) of Act 172. The decision is usually made by local authorities by a full meeting of council or district.

This is according to Act 172 that determines among others, the land size, use, setback, building lines, other proposed use, proposed heights, proposed alignment, width and level of roads and back-lanes, provision of open space and

access to community facilities, provision of utilities, and other requirements for any proper kind of development. Basically, the main idea of planning permission is to ensure that there are no irregularities emerging from land use and development by individuals such as traffic jams, pollution, nuisance problems, loss of value or even amenities, floods or effects on the neighbourhood and ensures that the new development is suitable for occupation (Ahmad et al., 2013). Planning permission also aims to ensure that the environment and social economic welfare is not jeopardised due to the intended development and that the development complies with all the planning guidelines and standards. The new development must also be vetted to verify whether it has access and complies with all conditions and restrictions of the land title and all other legal requirements, among others, where consent from neighbours may be required before the licence to operate the business is granted. Neighbours of a landed property may also have legitimate grievances and claims against a property owner when a property is being used as a STRA. In broad terms, development can be divided into two categories;

- i. the carrying out of physical operations such as building or engineering works, and
- ii. the making of a material change of use

A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of ‘material change of use’; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings (Mohammad Yusup et al., 2018). Whether a ‘material change of use’ has taken place is a matter of fact and degree, and this will be determined on the individual merits of a case by the local authority. There is absence of express provision on the need for planning permission under Act 172, unlike big scale developments for example, new urban development for a population exceeding ten thousand (10,000) or covering an area of more than one hundred (100 hectares) hectares or both and the development for the construction of any infrastructure or key facilities.

All development shall obtain the approval of planning permission from the Local Planning Authority. If development is carried out without planning permission or development carried out contrary to planning permission, the owner may be convicted of an offence under Section 27 and Section 28 of Act 172. Penalties that may be imposed are in accordance with Subsection 26 (1), which is a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding two years or both.

Planning permission will not normally be required in operating a business from home, provided that a dwelling house remains a private residence

first and business second. In the United Kingdom, a local planning authority is responsible for deciding whether planning permission is required and will determine this based on individual facts. Issues which they may consider, whether home working or a business, leads to notable increases in traffic, disturbance to neighbours, abnormal noise or smells, or the need for any major structural changes or major renovations. This is in line with the idea that the happiness of residence is very much dependent on the neighbourhood (Oliver Ling Hoon Leh et al., 2015). A home may be built as a one-family dwelling, but when it is converted to STRA use, it may be argued that it loses that character and contributes to unauthorized changes in neighbourhood character by intensifying the use both in terms of the number of people who typically use the property at any given time and by the negative impacts associated with frequent turnover. The following discussion suggests some considerations which may be possible in determining whether the character of a premise has changed.

Classification of STRAs based on the Owner Occupancy in the Premise

One possible way to address the ‘change of character’ issue is by differentiating the types of short-term accommodation businesses based on the occupancy of the host in the premise. In Austin, Texas, STRAs can essentially be characterized by: (1) home-sharing, (2) home rental, or (3) transient rental.

Under the “Home sharing” model, the guest and the host are co-occupants of the premises during the guest’s stay. According to this concept, "guests" use residences in ways that are almost identical to those of long-term inhabitants, neighbours, and their guests. This approach is frequently implemented without the typical permissions or licences needed for conventional tourist accommodations because it rarely calls for a physical alteration to the built environment. Home-sharing maximizes the accountability of the host because if the guest causes any nuisance to surrounding neighbours, the host is right there to deal with the problem. It would be reasonable if this type of STRA does not require planning permission.

Under the “Home rental” model, the host uses her primary residence for the STRA, but instead of restricting the guest to one room or STRA unit, the guest has rented the entire dwelling, and the host does not occupy the home during the guest’s stay. In contrast to the house-sharing concept, the home rental model places less responsibility on the host. Living close to this kind of rental property might be anything from slightly unsettling to drastically changing one's life. Since guests often only stay for a few days, neighbours frequently witness newcomers moving in and out of their homes, particularly in areas with a high concentration of short-term holiday rentals. Local governments are nevertheless concerned about related complaints like noise disturbance, parking problems, and waste. This is demonstrated in a recent piece about Los Angeles (Joel Grover, Matthew

Glasser, and Cole Sullivan, 2017) with tales of short-term holiday rentals being converted into party houses with terrifying outcomes for nearby residents. In this arrangement, local authorities would most likely need planning authorization. While lawful home-sharing should be allowed, the legislation should also stop illicit STRA operators from forcing families out of their previously peaceful neighbourhood (Salleh Buang, 2017).

Under the “Transient rental” model, the host is essentially operating an income property that does not serve as the host’s primary residence but is for the sole purpose of STRAs. Hosts utilizing the transient rental model are the least accountable of the three models. Since this model is mainly located in residential areas, by renting short-term vacation accommodation, tourists are using up space that otherwise might be used for living. In some places, this results in a decrease of long-term housing availability. Hence, while considering this model, cities in Malaysia could take example of large cities that are already facing problems with affordable housing like New York and San Francisco. It would be reasonable if this type of STRA requires planning permission.

Classification of STRAs based on Permitted Number of Bedrooms, Guests and Owner Occupancy

In some jurisdictions as per the following discussion, one possible way to address the ‘change of character’ issue is by differentiating the types of short-term accommodation businesses based on the number of permitted bedrooms and guests apart from owner occupancy. The neighbourhood as an element of the housing environment has a strong impact on residential satisfaction and influences the perception of residents’ well-being.

In the City of New Orleans, U.S. state of Louisiana, three different categorizations are provided (City of New Orleans STR Office, 2022). Under the category of Accessory Short-Term Rentals, the portion of the dwelling licensed as an Accessory Short-Term Rental is limited to three (3) bedrooms, and occupancy is limited to six (6) guests (There must be at least one bedroom in the dwelling for the owner-occupant). The owner-occupant shall occupy the dwelling and be present during any STRA occupancy. Proof of owner-occupancy will be established by verification of a Homestead Exemption in the name of the applicant. However, Short-Term Accessory Rentals are prohibited in the French Quarter. Under the Temporary Short -Term Rentals category, an in-town property manager is always available. Temporary Short-Term Rental licenses allow a maximum of 90-rental nights per license year. Occupancy is limited to two (2) guests per bedroom or a total of ten (10) guests, whichever is less. The entire dwelling may be rented, and the owner/occupant of the dwelling does not need to be present. No signs advertising the presence of a Short-Term Rental are allowed. Temporary Short-Term Rentals are prohibited in the French Quarter.

Under the Commercial Short-Term Rentals category, rental of an entire dwelling is allowed, where occupancy is limited to five (5) bedrooms and ten (10) guests. The owner/occupant does not need to be present during the rental period, and there is no limitation on the number of rental nights per license year. This type of business must be in a non-residential zoning district. Commercial Short-Term Rentals are prohibited in non-VCE portions of the French Quarter.

Theoretically, neighbours should not have many issues with a bed, couch, or mattress that a resident "host" offers in a shared or even private room. A local "host" is available to assist in regulating visitor behaviour, and since both "guests" and "hosts" evaluate one another, there is a market incentive for both parties to behave politely. When whole houses are rented, there are more chances that the immediate neighbours will be negatively impacted (noise, disruptive behaviour), and the neighbourhood will become more "touristified" (Colomb & Novy, 2016). Hence, it would be reasonable if planning permission is required in event the STRA premise is operated with a large number of bedrooms and guests.

Residential Short-Term Rental Permit Categories based on Location with Speciation of Bedrooms and Guests in the USA

Limiting the character of use in the property can be an option to maintain the character of the STRA premise. When new projects first came into existence decades ago, the main purpose of zoning was to shield property owners from their negative effects. In the absence of zoning, residential property owners would have to deal with rapidly declining property values if a development had major negative effects. Regulations pertaining to zoning place limits on a landowner's general freedom to use and develop their property as they see fit, considering the pre-existing socioeconomic patterns of a particular community. This allows for the intentional use of land for the benefit of the community. It is a value system in that it serves as a tool to make the people's dreams come true. Its fundamental tenet is the sustainable management of land use and development for the benefit of an entire community (Akintunde Kabir Otubu, 2009). Thus, zoning can be used in addressing the evolution of technology in the case of STRA. In the City of Charleston, South Carolina, as of July 10, 2018, STRA regulations now have four Residential Short-Term Rental Permit Categories based on location (Department of Planning, Housing and Infrastructure, 2018). Category I refers to all properties located within the City's Old and Historic District. Within that area, the property must be individually listed on the National Register of Historic Places to be eligible for short-term renting. Category II refers to all other properties located on the Charleston peninsula, if they are outside the Short-Term Rental Overlay Zone. Category III refers to all other properties in the City of Charleston. This includes incorporated areas of West Ashley, James Island, Johns Island, Cainhoy, and Daniel Island. Under the past regulations, these areas are not eligible for any

short-term legal rentals, but the ordinance allows short-term renting in these areas, subject to specific requirements. The STRA Overlay Zone refers to a pre-existing area in Cannonborough-Elliotborough. Commercial Short-Term Rental Permit, which follows the same rules as the past ordinances. Properties within the Short-Term Rental Overlay are still eligible for a Bed & Breakfast Permit as defined under past ordinances. No changes to this area have been made, except that an annual Permit renewal will be required.

In the City of Charleston, to ensure that the STRA does not change the character of the property, a maximum guests rule is applied where up to four adults, regardless of relationship, can stay overnight in an STRA according to the City of Charleston Short Term Rental Ordinance, 2018, whereas studio apartments and dwelling units shall be limited to have one (1) guest bedroom and allowed a maximum of two (2) guests in the City of New Orleans, the U.S. state of Louisiana under Article 20 of Comprehensive Zoning Ordinance, 2016 (20.3.LLL.1). In the City of Charleston also, a host must sleep overnight at the property whenever it is being rented.

Therefore, by preserving the unique characteristics of the best residential neighbourhoods and severely limiting the scope of new development or changes in the intensity and type of use of existing property, the aforementioned approaches aim to protect neighbourhoods from uses that jeopardize the quality of the neighbourhood environment (Abdul Rahman et al., 2012).

Specification of locations which requires planning permission in the operation of STRA would be one of the ways to assist STRA operators in determining the need of planning permission.

Yearly Maximum Day-Cap to Maintain the Character of STRA Premise in Australia

In New South Wales, hosted STRA is not restricted by any day limits and can be carried out 365 days per year (Department of Planning, Housing and Infrastructure, 2024). In some NSW local government areas (LGAs), there are limits on the number of days that a dwelling can be used for non-hosted STRA. Non-hosted STRA is restricted to a maximum of 180 days per 365-day annual period in the following areas:

- (a) the Greater Sydney region (not including the Central Coast)
- (b) the Ballina area
- (c) certain land in the Clarence Valley area
- (d) certain land in the Muswellbrook area.

LGAs within the Greater Sydney region that are restricted to a maximum of 180 days per year. From 23 September 2024, non-hosted STRA in the Byron Shire LGA will be restricted to 60 days in any 365-day period across the majority of the LGA, except in two mapped precincts in Byron Bay and Brunswick Heads where non-hosted STRA will not be restricted.

Hosted STRA means that the host lives on the premises during the period of the accommodation provided. For example, a room in a dwelling that is rented for short periods where the host also resides. The host may come and go from the dwelling during the time of the accommodation (e.g. for work or recreation). When a host lives on a property with two dwellings and does not permanently reside in the dwelling being rented (for example a secondary dwelling or granny flat), this is not considered to be hosted STRA. Hosted STRA may be undertaken on any land in a zone in which residential accommodation of a type corresponding to the dwelling is permitted with or without development consent, 365 days per year.

Non-hosted STRA means that the accommodation can be carried out without the host residing on the premises. For example, a holiday house or unit at a premises separate from where the host resides. Non-hosted STRA may be undertaken on any land in a zone in which residential accommodation of a type corresponding to the dwelling is permitted with or without consent. Individual residential units within a premises where there is an onsite manager or concierge are generally considered as non-hosted.

An annual non-hosted STRA day limit is calculated from the date when a dwelling is registered for STRA on the STRA Register. For non-hosted STRA, where the booking is for 21 or more consecutive days, the booking will not count towards the day limits. This supports mobile workforces and the corporate accommodation sector which tend to have longer stays and lower amenity impacts.

Yearly maximum day-cap is one of the ways to maintain the character of STRA premise. Hence, it can also be argued that hosted STRA is also an alternative to ensure that the character of the STRA buildings is maintained. The presence of the host (owner) in the STRA premise is seen as a positive way to control the guests to ensure that their presence in the premise do not cause any unnecessary inconveniences to the other residents. STRA may cause noise-related irritation in the neighbourhood, especially when it comes to parties or visitors coming and going. It is also possible that STRA guests are unfamiliar with regional regulations about animal behaviour (such as dogs), trash management and disposal, etc. On a building level, unease could be linked to more "strangers" having access to common facilities and possibly breaking rules of behaviour (e.g., trash near the pool, loud noises early in the morning). The negative effects of STRA to its surroundings is expected to be more obvious when

the occupants who operate STRA are ignorant of the sensitivity of his surroundings. In 2020, a study was carried out in the Klang Valley employing non-parametric convenience sampling to conduct in-person interviews with 276 tenants of high-rise apartments with varying costs. Tenants were found to be ignorant about the Malaysian Strata Management Act 2013, the Strata Title Act 1985, and the house rules that regulate them with respect to maintenance and management matters. Low understanding of the statutes and regulation among tenants is one of the factors that may contribute to problems associated with long term operation of STRA. Hence, maximum day cap and hosted STRA can be seen as options to reduce the negative impact of STRA to the surroundings (Ummu Sholehah Mohd Nor, 2020) Therefore, if necessary, these two mechanisms—the maximum day cap and hosted STRA—may likewise be used in place of the necessity for planning permission.

CONCLUSION

Whether the operation of STRA causes material change to the STRA property very much depends on the nature of the operation of STRA and as such this article proposed that different terminologies with various methodology of business operation as discussed in this paper may provide some insights as to the possible methods to determine the issue of material change in the use of the buildings for STRA. As it is, governments of many nations are still having concern, in terms of consumer protection, there might be insufficient preparations for accommodating guests (e.g., unsafe neighborhood/property and unsanitary conditions). Therefore, regulators – particularly local governments – are increasingly introducing various ways to restrict this platform in a stringent manner (Jihwan Yeon, Hyoung Ju Song, Seoki Lee, 2020) Hence, easily navigable web interface should be introduced to enable residents to locate information on STRA laws in their community with ease when residents enter their address into the portal. Additionally, the portal will be a useful tool for researchers and policy makers to rapidly comprehend the range of state-wide responses to STRA legislation. In the long run, it might make policy evaluation of best practices in the field of STRA regulation possible.

ACKNOWLEDGEMENTS

The researchers wish to thank the National Real Property Research Coordinator (NAPREC), National Institute of Valuation (INSPEN), Valuation & Property Services Department (JPPH Malaysia) and Ministry of Finance, Malaysia for funding this research. File no: 100-IRMI/GOV 16/6/2 (018/2019).

REFERENCES

- Abdul Rahman, N., Omar, D., & Salleh, A. G. (2012). Determinant Factors Of Neighbourhood Quality. *Planning Malaysia*, 10. <https://doi.org/10.21837/pm.v10i3.98>
- Ahmad, F., Mohd @ Ahmad, I., Maidin, S. L., Zainol, R., & Mohd Noor, N. (2013). Malaysian Development Plan System: Issues and Problems, One Decade After Its Reform (2001-2011). *Planning Malaysia*, 11. <https://doi.org/10.21837/pm.v11i3.105>
- Bond, S., Rambaldi, A., Corcoran, J., Sigler, T., & Zou, F. (2023). A Review of the Impacts of Short-term Rental Accommodation in Queensland. https://planning.statedevelopment.qld.gov.au/_data/assets/pdf_file/0020/83333/a-review-of-the-impacts-of-short-term-rental-accommodation-in-queensland.pdf
- Buang, S. (2017, June 22). Regulating home – sharing, New Straits Times Online. <https://www.nst.com.my/opinion/columnists/2017/06/251179/regulating>.
- City of Charleston, Short Term Rentals Frequently Asked Questions, 2018, <https://www.charleston-sc.gov/DocumentCenter/View/30035/FAQs-for-STR-083121>
- City of New Orleans STR Office, 2022, <https://nola.gov/next/short-term-rental-administration/home/>.
- Dolnicar, S. (2019). A review of research into paid online peer-to-peer accommodation. *Annals of Tourism Research*, 75(C), 248–264. <https://ideas.repec.org/a/eee/anture/v75y2019icp248-264.html>
- Grover, J., Glasser, M., & Sullivan, C. (March 1, 2017.). Short-Term Rentals Turn Into Nightmares Next Door. NBC Los Angeles. <https://www.nbclosangeles.com/news/i-team-investigation-short-term-rentals-property-airbnb/31843/>
- Gurran, N. (2017). Global Home-Sharing, Local Communities and the Airbnb Debate: *A Planning Research Agenda. Planning Theory & Practice*, 19(2), 298–304. <https://doi.org/10.1080/14649357.2017.1383731>
- Meng Lee Lik, et al. (2006). How We Failed To Plan for Habitability. *Journal of the Malaysian Institute of Planners*, 1-21.
- Mohd Nor, U. S. (2020). Tenants' satisfaction in high residential buildings / Ummu Sholehah Mohd Nor, Wan Nor Azriyati Wan Abd Aziz and Zafirah Al Sadat Zyed. <http://malrep.uum.edu.my/rep/Record/my.uitm.ir.30045/Details>
- New South Wales Department of Planning, Housing and Infrastructure, Frequently Asked Questions, 2024, <https://www.planning.nsw.gov.au/sites/default/files/2024-02/stra-legislative-framework-faq.pdf>
- Otubu, A. K. (2009). Land Use Zoning In a Changing Urban Environment. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1439742>
- Protest and Resistance in the Tourist City. (2016). Routledge & CRC Press. <https://www.routledge.com/Protest-and-Resistance-in-the-Tourist-City/Colomb-Novy/p/book/9781138342248>
- What's Old Becomes New: Regulating the Sharing Economy. (2014). Boston Bar Association. Retrieved May 16, 2024, from <https://bostonbar.org/journal/whats-old-becomes-new-regulating-the-sharing-economy/>

Yeon, J., Song, H. J., & Lee, S. (2020). Impact of short-term rental regulation on hotel industry: a difference-in-differences approach. *Annals of Tourism Research*, 83(C).
<https://econpapers.repec.org/RePEc:eee:anture:v:83:y:2020:i:c:s0160738320300839>

Received: 20th May 2024. Accepted: 17th July 2024