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Monday, March 9, 2020

Our Ref.: ME 19054 – LT8

The Chairman,
Environmental & Planning Review Tribunal
Block B, St. Francis Ditch,
Floriana

Location: *Arzella, Triq il-Merill, Ghaxaq*

Proposal: *Application for the use of premises on a permanent basis of approved permits PA/9104/17, PA/0273/15 and PA/0860/10*



Your Ref: PA/05542/19

Appeal re refusal of Application PA 05542/19

With reference to application in caption we are hereby submitting our request for appeal from decision taken by the Environmental and Planning Commission, which decision has been published on the 26th February 2020.

We are hereby submitting our comments as we feel that the decision taken by the EPC re application in caption is discriminatory and was simply influenced by an objector who was not registered as an official objector during the course of the application.

Article (4)(a)(b) states the procedure how the commission should handle the case. As can be noted from a quick look at the file in question the procedure has not been followed in view of the fact that the requested information by the commission was submitted but instead the commission turned a blind eye. This not only negatively affected my client's right but is *ultra-vires* as the commission has to take into consideration both the information submitted and Article 72(2)(d) which states that in its determination upon an application for development permission, the Planning Board shall have to regard to

- (a) Plans
- (b) Policies
- (c) Regulations made under this act
- (d) Any other material consideration, including surrounding legal commitments, environmental, aesthetic and sanitary considerations, which the planning board may deem relevant.

In this case the Planning Commission has failed to even acknowledge the fact of a number of non-residential commitments and has once again imposed a time limit on this application.

The arguments of the commission: -

"The proposal runs counter to the provisions of policy SMHO 02 of the South Malta Local Plan which specifies that industrial development should be limited to activities which do not have an impact on the residential amenity of the area in terms of noise, vibration, additional traffic generation and operating times. The proposal therefore also runs counter to the SPED Urban Objective 3 which aims to protect and enhance the character and amenity of urban areas and Thematic Objective 6.1 seeking to safeguard environmental health from air and noise pollution and other risks associated with the industrial use by controlling the location, design and operation of development. "

Please note that during the sitting of the committee of the 14th October 2019 the board noted that:

In line with S.L. 552.13 regulation 13(4), justification related to reasons in the DPA report as follows:

Board noted doc 66e which is a pre 94 Police License and therefore the existing use is legitimate as per Cap 552 article 72(2b)

In our opinion since the use of these premises was already established before 1994 it should be treated as other similar cases and as Cap552 art 72 (2b) as cited by the board itself and a full permit to keep same operation is issued.

We also request the EPRT to take note of the following

- A) other similar developments, one of which is less than 200m away, and which are covered with permits namely PA 193/14 which was also approved on same principle as cited above.
- B) There is a farm less than 20meters away from the client's property which is still fully operational

C) Applicant have been operating on this same premises for over 30years and there have never been any objections since.

Regards,


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