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ENVIRONMENT AND PLANNING
REVIEW TRIBUNAL

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ST. FRANCIS DITCH
FLORIANA

The Environment and Planning Review Tribunal

Application Number: EP 0040/18

Applicant: Five Star Developments Limited

Activity: Storage of used cooking oil (UCO) with a minimum capacity of 70 cubic meters

Site: 5 Star Development Limited, Garage P7, Triq il-Belt Valletta, Ghaxaq

This is an appeal against the decision of the Environment and Resources Authority dated 6 July 2021 by means of which it dismissed the Appellant's application for an environmental permit for the storage of UCO (refer to Document A).

The Facts in Brief

The Appellant submitted an application to the Authority for an environmental permit in November 2018. Throughout the permitting process, the Appellant was requested to carry out certain measures within the facility and to provide the Authority with reports, certifications and other information it required to enable it to issue the permit (refer to correspondence exchanged between the Authority and the Appellant, attached as Document B).

A copy of the draft permit was issued on 4 March 2020 and sent to the Appellant for comments. Then, on 30 March 2020, the Authority sent the Appellant a copy of the Board's decision notice, favourably considering the application. The issuance of the permit was however subject to fulfilment of two conditions, namely, (i) submission of a bank guarantee of €6,350, and (ii) submission of a certification by an expert or entity specialising in firefighting, confirming that the site operations are subject to a fire contingency plan, that the required fire suppression/mitigation/fighting measures are in place and that the personnel on site is qualified in firefighting.

In April 2020, the Appellant informed the Authority that it would require some time to fulfil condition 2 and requested until 19 June 2020. However, for reasons mainly due to Covid-19, the deadline could not be met. Among other things, the firefighting courses had been indefinitely postponed, and certain fire-fighting equipment which the Appellant had ordered was delayed in transit. Accordingly, a further extension of 31 August 2021 was requested by the Appellant.

Due to the ongoing pandemic, it remained impossible for the Appellant to comply with condition 2 by the extended deadline and therefore this was extended further by the Authority. It was not until December 2020 that the Appellant was able to submit the fire contingency plan and the certificates evidencing fire-fighting training for its personnel. It also submitted the bank guarantee pursuant to condition 1.

However, full certification from the fire expert could not be obtained at that stage, and this for reasons relating to Covid-19, as will be explained further during the proceedings. A further extension was thus required by the Appellant. In February 2021, the Appellant submitted the requested certification. However, the Authority did not deem this to be adequate since the fire pump had not yet been installed.

As will be explained in these proceedings, the Appellant could not install the fire pump due to ongoing infrastructural works on the Site, which were also heavily delayed due to the pandemic.

In July 2021, the Appellant received a decision notice from the Authority informing the Appellant that the application has been dismissed and that any operations taking place on site would thus be deemed as "unpermitted". The Applicant therefore never actually obtained an executable environmental permit.

Grounds of Appeal

The Appellant submits that the Authority's dismissal of the Board's decision to grant authorisation is not only arbitrary and unfounded but is also contrary to the provisions of the Environment Protection Act (EPA).

In terms of the EPA, the Authority may grant, partially grant or refuse an authorisation and, in cases where it grants, or partially grants, an authorisation, it may impose terms and conditions as it deems appropriate.

In the present case, the Authority's Board granted the Appellant authorisation to carry out the activity in question, subject to the prior fulfilment of certain conditions. Thus, in principle, the environmental permit was granted to the Appellant; such permit however would only become "executable" once the conditions to which it was subject are satisfied by the Appellant.

As the Appellant will show during these proceedings, upon being notified by the Authority of the conditions set out in the permit, the Appellant began to implement the necessary measures required to fulfil such conditions, specifically condition 2 (set out above). For reasons beyond the Appellant's control, the implementation of these measures took longer than originally anticipated; however, at no point in time did the Appellant breach any condition or requirements of the authorisation granted to it, nor did it ever indicate to the Authority, or demonstrate in any way, that it was abandoning the application, or that it was unable to satisfy the conditions imposed in the permit. In fact, the Appellant had fulfilled condition 1 and partially fulfilled Condition 2 at the time of the dismissal decision. The Appellant simply required more time to implement the remainder of the second Condition, and this for reasons beyond its control.

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The Appellant submits that the Authority had no legal basis for dismissing the Board's decision to grant authorisation for the activity in question. As noted, authorisation may be revoked only in specific circumstances, none of which exist in the present case. Rather than dismiss the decision, the Authority ought to have instead suspended the authorisation and the permit processing until the second condition could be satisfied in full by the Appellant. Given that operations on Site had not – and could not – commence without a permit, no environmental risk would have been posed by suspending the process. Instead, the Authority decided to dismiss the authorisation granted by the Board, a decision which will inevitably result in a loss of time and financial resources for the Appellant, particularly when the process was, at the time of the dismissal, almost complete.

Conclusion

The Appellant therefore submits that the Authority's dismissal of the Board's decision to grant authorisation was unfounded and without any legal basis. Accordingly, the Appellant humbly requests this Tribunal to revoke the dismissal decision of the Authority.

List of witnesses

1. Representatives, both current and past, of the Appellant company;
2. Representatives of the Environment and Resources Authority, including but not limited to, Daniel Borg, for the confirmation of facts;
3. Representatives of the Planning Authority for the confirmation of facts;
4. Michael Sant, as a technical expert and for the confirmation of facts;
5. Civil works contractors and their representatives involved in the execution of infrastructural works on the Site, for the confirmation of facts;
6. Fire-fighting and fire safety training consultants and their representatives, for the confirmation of facts;
7. All witnesses indicated by other parties in these proceedings for confirmation of facts, and/or in cross examination;

The Appellant reserves the right to call other witnesses for the confirmation of other facts that arise from the Authority's reply to this appeal application.



Av. Rya Gatt