

Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Elmwick Ltd T/A Red Fox Recycling c/o Aidan O' Neill Coakley O Neill Town Planning Ltd NSC Campus Mahon Cork

19/02/2020

RE: Section 5 Declaration R560/19 Unit 1-3 Churchfield Industrial Estate

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows:

In view of the above and having regard to —

- Sections 2 (1), 3(1), 4(1), 4(4) of the Planning and Development Act, 2000 as amended
- Article 6 and 9 of Part 2 of the Planning and Development Regulations, 2001 as amended
- Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 as amended.
- Schedule 7 of the Planning and Development Regulations, 2001 as amended.

It is concluded that the following construction works at Units 1-3 Churchfield Industrial Estate, namely:

- Demolition of an annex (50m²) to be replaced by a portocabin
- Improvement of the existing drainage on site by means of the installation of surface water drainage.
- Concreting of the existing yard
- Installation of a weighbridge
- Wash down area
- Marking out of car and truck parking spaces



Is development and is not exempted development for the following reasons:

- (a) There are no other exemptions under either the Planning and Development Act, 2000, as amended, or the Planning and Development Regulations 2001, as amended, that apply in respect of this development.
- (b) The use of this premises as a waste transfer station has been abandoned and therefore, would consist of works to a structure the use of which is an unauthorised use.
- (c) Irrespective of the above, the construction of these works amounts to an intensification of use which constitutes a material change of use, in light of the planning implications for the planning unit and is, therefore, development having regard to the provisions of section 3(1) of the Planning and Development Act, 2000,
- (d) On the basis of the documentation on file, evidence has not been provided to demonstrate that the subject development is in breach of any threshold or subthreshold requirement for an Environmental Impact Assessment, or appropriate assessment.

Is misa le meas,

Kerry Bergin

Development Management Section

Community, Culture and Placemaking Directorate

Cork City Council

ANNER'S REPORT Cork City Council			
Ref. R560/19	Development Management		
	Community, Culture and Place-making		
Application type	Section 5 Declaration		
Description	Construction works at the existing permitted waste recycling and transfer station		
Location	Unit 1-3 Churchfield Industrial Estate		
Applicant	Elmwick Ltd T/A Red Fox Recycling		
Date	13/02/2020		
Recommendation	Is Development and Is Not Exempted Development		

SITE DESCRIPTION

The subject site is located within the Churchfield Industrial Estate, north of John F. Connolly Road, approximately 2km northwest of Cork City Centre. The area is light industrial with a number of waste facilities in the vicinity. Adjoining uses include Ashgrove Recycling and Waste Management, Country Clean and Cork Mini Skip Hire (to the east). The National Recycling facility is located to the southeast of the site.

Lands to the north are grassed and agricultural in nature.

The site which includes a warehouse type building and associated gravelled area is accessed from the John F Connolly Road. This access is shared by another warehouse building located to the front of the site which currently houses "Sample Studios".

On the day of site inspection, there was no activity on site and the gravelled yard area was generally cleared, save from



Figure 1 Churchfield image from google maps

QUESTION

Whether construction works at the existing permitted waste recycling and transfer station at Units 1-3 Churchfield Industrial Estate is development which is exempted development.

- Demolition of an annex (50m²) to be replaced by a portocabin
- Improvement of the existing drainage on site by means of the installation of surface water drainage.
- Concreting of the existing yard
- Installation of a weighbridge
- Wash down area
- Marking out of car and truck parking spaces

PLANNING HISTORY

T.P 12/35137	PP granted for the extension of existing waste recycling and	Not
1.7 12/33137	transfer station for the processing, sorting and onward transfer of up to 24,000 tonnes per annum of non-hazardous	implemented
	material. Development will include the provision of a new two-way	. /
	entrance; downgrading of existing entrance for use by private vehicles only, demountable weighbridge; office and staff	in the english
	welfare facilities comprising a 100m2 mezzanine development	
	within the existing building; demolition of lean-to-shed (60 m2); 3,900 m2 of new concrete hard-standing; 680m2 of	
	internal roads and footpaths; foundation pads for plant items to include shears, container lift and generator; surface water	100
	interceptor and surface water percolation area	
T.P 04/28034	Blarney Wheel-A-Bins Ltd	Granted. 31 st
	Unit No 3	March, 2004
	Retention of change of use of warehousing to a waste recycling and transfer facility.	
T.P 04/28849	Units No 1&2	Granted: Date
	Retention of Change of use of warehousing to a waste	of grant: 22 nd
	recycling and transfer facility	of November, 2004
TP 03/27133	Blarney Wheel-A-Bins Ltd	REFUSED on
	PP granted for a change of use of units 2 & 3 from	grounds of
	warehousing to materials transfer facility and unit 1 from warehousing to storage (storage of skips and ancillaries)	zoning.
T.P 98/22739	Permission granted for 4 no. warehouse units.	
,		

DEVELOPMENT PLAN

ZO 5 Light Industry and Related Uses

Objective: To provide for light industry (and related uses).

Paragraph 15.11 The zoning objective for areas zoned light industry is to protect the industrial nature of the development and to provide for light industry where the primary activity is the manufacturing of a physical product. The following uses will be acceptable in principle in this zone: light industry, small to medium sized manufacturing and repairs, trade warehousing and distribution, wholesaling, trade showrooms, retail showrooms (where ancillary to manufacturing, fitting and business to business activity), car showrooms and incubator units. Pure retailing, retail warehousing, offices and office based industry will not generally be acceptable in these zones (Chapter 3). Leisure uses may be open for consideration in this zone in certain limited circumstances (see 3.35).

Chapter 12 of the City Development Plan refers to waste and recycling.

LEGISLATIVE CONTEXT

Planning and Development Act 2000 -2020 as amended

Section 2 (1)

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and in relation to a protected structure, or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure"

<u>"structure"</u> as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and-

(a) where the context so admits, includes the land on, in or under which the structure is situate

Section 3(1)

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

Section 4(1)

The following shall be exempted developments for the purposes of this Act -

(h) development consisting of the use of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures:

Section 4(4)

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Definitions

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture and which is

- (a) for or incidental to the making of any article or part of an article or
- (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treating of minerals

and for the purposes of this paragraph, "article" includes-

- (i) a vehicle, aircraft, ship or vessel or
- (ii) a sounding recording, film, broadcast, cable programme, publication and computer program or other original database

The "industrial processes" referred to the exempted development regulations do not apply as waste is not an "article".

Schedule 2, Part 1 deals with Exempted Development- General

CLASS 50

- (a) The demolition of a building, or buildings, within the curtilage of—
- 1. No such building or buildings shall abut on another building in separate ownership.

(i) a house,

- The cumulative floor area of any such building, or buildings, shall not exceed:
- (ii) an industrial building,
- (iii) a business premises, or
- (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and
- (iv) a farmyard complex.
- (b) in all other cases, 100 square metres.
- (b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.
- 3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

Article 6(1)

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 2.

Article 9 (1) of the Planning and Development Regulations 2001 provides for restrictions on exemption and states that development to which Article 6 relates shall not be exempted development for the purposes of the Act.

- (a) If the carrying out of such development would:
- i. Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act
- ii. endanger public safety by reason of traffic hazard or obstruction of road users,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

viii. consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Environmental Impact Assessment

\$176 of the Planning and Development Act, 2000 as amended.

Planning and Development Regulations 2001 as amended

Part 10 of the Regulations Environmental Impact Assessment of S.I No. 600 of 2001 refers.

<u>Schedule 5</u> of SI No. 600 of 2001 lists the type of development for the purpose of Part 10 of the

Regulations.

Section 11(b)

Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule

Schedule 7

Criteria for determining whether a development would or would not be likely to have significant effects on the environment.

ASSESSMENT:

Background

- Permission was granted at this site in 2004/2005 (T.P 04/28034/T.P 04/28849) for the retention of change of use of warehousing to a waste recycling and transfer facility. The schedule of conditions is attached to this report. 2600 tonnes of collected waste p.a was permitted in T.P 04/28879. Planning Conditions sought compliance documents to be agreed prior to the commencement of development waste processing details, landscaping, signage however, no documents from the applicants or documents relating to the processing of this compliance are evident.
- Cork City Council received a water facility permit and certificate of registration application on the 04th November 2019 from Elmwick Ltd. D.4: Waste Volumes of the application form refer to (Class 7 (construction and demolition waste) 10,150 tonnes and Class 10 -14,210 tonnes. (24,360 tonnes per annum).
- Correspondence from the Environment Section of Cork City Council states the following:

The first permit was issued on 19th December 2008 and valid until 31st October 2011. The tonnage limit of this permit was 7500 tonnes per annum. Based on site inspection reports, skips were stored on site but waste (shredding and packaging of cardboard) was not accepted onto site until approx November 2009. Following this, the waste process on site was shredding and packaging of cardboard.

Site inspection 10th September, 2010, all waste entering the site came through Ashgrove Recycling.

2011 – the processing of cardboard due to cease following inspection in March. A new permit was issued on 6th October, 2011 until 31^s October, 2016 for processing scrap metal with a tonnage limit of 25,000 tonnes.

2014 – site inspection on the $18^{\rm th}$ November – it was noted that waste not being accepted on site.

2016 –waste still not accepted on site. Permit renewed on 19th October, 2016. No waste was accepted on site under this permit.

In July 2019, that permit was surrendered and the site cleaned and emptied.

Question

The referrer seeks a declaration on a number of different construction elements. These are listed below. It was noted during site inspection, that the generally the site was cleared and the items listed below have not been constructed to date.

- Demolition of an annex (50m²) to be replaced by a portocabin
- Improvement of the existing drainage on site by means of the installation of surface water drainage.
- Concreting of the existing yard
- Installation of a weighbridge
- Wash down area
- Marking out of car and truck parking spaces

(a) Is or is not development:

Section 3(1) defines development as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'. And the term 'works' is defined in section 2 as 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. Having regard to both definitions, I would conclude that all listed elements referred to comprise development.

(b) Demolition of an annex (50m²)

The drawings submitted do not show the location of the subject annex. The documentation submitted states that the floor area is 50m². Being familiar with the site, there does not appear to be any annex or structure abutting buildings in separate ownership. However, the demolition of a building to facilitate development of any class prescribed for the purposes of Section 176 of the Act "de-exempts" any such demolition.

(c) Replacement with a porto-cabin

No information has been submitted regarding the scale, location and design of the proposed portocabin and therefore, this question cannot be determined.

(d) Other listed construction works:

- Improvement of the existing drainage on site by means of the installation of surface water drainage.
- Concreting of the existing yard
- Installation of a weighbridge
- Wash down area
- Marking out of car and truck parking spaces

Specific planning exemptions

I cannot find any exemptions for the aforementioned works in the planning regulations.

The "industrial processes" referred to the exempted development regulations do not apply as waste is not an "article".

ii. Material Change of use

The relevance of the 2004 planning permissions is ambiguous. Many issues, such as the type of waste and the processing of same, were to be determined through post permission agreements. However, there is a lack of compliance documentation on file. It is also unclear if this permission was enacted within the five years of the grant of permission and if it was, if it was enacted in its proper form. It is clear however, from the registered information in the intervening years between 2004 and 2019 which has been provided through the information submitted in previous waste permit licences applications and site inspections undertaken by the Environment Department of CCC, that the site has not been in use for a significant length of time (since 2011) and in July, 2019 the site was cleared and emptied.

The use at this site ceased for a considerable period of time. The site was cleared and emptied. It is considered that abandonment can be established in this case.

It is considered that the carrying out of these works would constitute a <u>material change of use</u>. For reasons outlined below, if the intensification in use were to be the subject of a planning application, material planning considerations would arise beyond those that occurred in determining any previous permission.

The exact nature of the waste that will be accepted is unclear and it is difficult to get a clear indication of the implications in terms of waste processing. However, different planning considerations in respect to traffic assessment, types of vehicles to be used, details of volume, storage, frequency of removal of waste, pedestrian access and lighting, noise, water management, the use of new equipment and production methods, increased traffic and noise, and an extension of the physical area of operation are new issues to be considered.

The original planning permission in 2004 allowed for **2600** tonnage of waste to be accepted at the site per annum. The information submitted with the WPL 2019 seeks to process 24,000 tonnes of waste. This information has not been included in the referral.

There are substantive changes proposed for the upgrading of the infrastructural development of the site, which in their totality clearly indicate a more intensive increase in activity, particularly as this site has not been used for waste processing since at least 2011. The undertaking of these works leads to an intensification of use on this site and would therefore to be taken as having materially changed.

Note: The access to the site is shown to be outside the red line site boundary in the documentation submitted as part of the referral. However, this entrance has been shown in previous planning applications and as part of the WPLs.

Material alteration of character. iii.

It is proposed to alter the external appearance of the premises by the installation of surface water drainage. (drawings show the inclusion of a pluvial cube attenuation in the northeastern portion of the site), replacement of gravel/hardcore with concrete, installation of a weighbridge (not shown on drawings), Wash down area and 7 marked car spaces, and 10 no. skip truck parking.

Section 4 (1)(h) does not apply as the works listed are significant and would materially alter the character of the premises. On the day of site inspection, it was clear that there was no activity occurring and the site area was generally cleared of material. Given the extent of works proposed and the resultant intensification of activity on site, it is clear that the character of the premises will be materially altered.

Appropriate Assessment iv.

Section 4 (4) of the Act provides that, notwithstanding other exemptions, development shall not be exempt if EIA or AA is required. The site is located approx. 5.2 Km from Cork Harbour SPA (site code 004030) and approx. 10.4 Km from the Great Island Channel cSAC (site code 001058).

Insufficient information has been submitted to enable a full assessment.

Environmental Impact Assessment

Section 4 (4) of the Act provides that, notwithstanding other exemptions, development shall not be exempt if EIA or AA is required.

Section 5 of the Planning and Development Regulations, 2001 (as amended) sets out development for the purposes of Part 10 i.e EIA. Part 2 (11)(b) of Schedule 5 specifies: Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

It is therefore open to the planning authority to determine whether a development which is below the specified threshold of 25,000 tonnes per annum (as indicated in the current WPL) could be such as to have a significant impact on the environment and whether the submission of an EIAR is warranted.

Regards sub-threshold development, Schedule 7 of the Regulations sets out the criteria for determining whether a development would or not be likely to have significant effects on the environment and include 1. characteristics of the development, 2. the location of the development and 3, the characteristics of potential impacts.

The location of the site is significant having regard to the large numbers of similar facilities in Churchfield Industrial Estate, all which are adjoining. There are houses in the proximity and lands to the north of the site are similarly zoned 'ZO4', 'Residential, Local Services and institutional Uses'.

The probability, duration and frequency of such impacts in the absence of detailed information is difficult to fully determine regarding the type of material being processed at the site, the likely emissions from same or of any mitigations measures. However, based on the level of activity proposed for the site, as indicated by the extent of proposed physical works proposed and the high level of waste volumes (as proposed in the current WPL), the the location of the development in in a built-up area and respect of adjoining uses/facilities located on John F. Connolly Road. which are of a similar nature, and hence the potential cumulative impacts of pollution, it is reasonable to conclude that it is likely that environmental impact assessment is required for this development.

However, this is a very prelimary assessment and in other instances, the question of a structured screening process would arise. (Ref: Para 3.16, Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, August 2018).

Conclusion

- There are no exemptions for the proposed construction works.
- The permitted use has been abandoned.
- Irrespective, the undertaking of these works leads to an intensification of use on this site and would therefore to be taken as having materially changed.
- Were they the subject of a planning application, material planning consideration would arise beyond those that occurred in determining any previous permission.
- There is insufficient information on file to determine if the proposed works would require an Environmental Impact Assessment and Appropriate Assessment, and in this circumstance, it is recommended that screening for both in accordance with S176 of the Act is undertaken.

RECOMMENDATION

Having regard to:

- Sections 2 (1), 3(1), 4(1), 4(4) of the Planning and Development Act, 2000 as amended
- Article 6 and 9 of Part 2 of the Planning and Development Regulations, 2001 as amended
- Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 as amended.
- Schedule 7 of the Planning and Development Regulations, 2001 as amended.

It is concluded that the following construction works at Units 1-3 Churchfield Industrial Estate, namely:

- Demolition of an annex (50m²) to be replaced by a portocabing a second second
- Improvement of the existing drainage on site by means of the installation of surface water drainage.

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- Concreting of the existing yard
- Installation of a weighbridge

- Wash down area
- Marking out of car and truck parking spaces

Is development and is not exempted development for the following reasons:

- (a) There are no other exemptions under either the Planning and Development Act, 2000, as amended, or the Planning and Development Regulations 2001, as amended, that apply in respect of this development.
- (b) The use of this premises as a waste transfer station has been abandoned and therefore, would consist of works to a structure the use of which is an unauthorised use.
- (c) Irrespective of the above, the construction of these works amounts to an intensification of use which constitutes a material change of use, in light of the planning implications for the planning unit and is, therefore, development having regard to the provisions of section 3(1) of the Planning and Development Act, 2000,
- (d) On the basis of the documentation on file, evidence has not been provided to demonstrate that the subject development is in breach of any threshold or subthreshold requirement for an Environmental Impact Assessment, or appropriate assessment.

Flichelle Delaner Executive Planner. 13/02/2020

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COMHAIRLE CATHRACH CHORCAÍ CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork. R-Phost/E-Mail planning@corkcity.ie Fón/Tel: 021-4924564/4321 Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM

under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT UNITS 1-3 CHURCHFIELD INDUSTRIAL ESTATE, JOHN F GNHOLLT LOAD CHURCHFIELD, COPIC

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

2. QUESTION/ DECLARATION DETAILS

<u>Sample Question:</u> Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?
Note: only works listed and described under this section will be assessed under the section 5 declaration.
WHETHER GUSTRUCTION LORGS AT THE EXISTING PERMITTED
WASTE RECYCLING AND TRANSFER STATILY AT UNITS 1-3
CHUKCHFIELD INDUITICIAL ETMATE, JOHN F GNN-LLY BAD
CHURCHFIELD, COILL IS DEVELOTHENT WHICH IS EXEMPTED
DEVELOMMENT

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).
SEE ATT AMED

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure	/s = 3,000 M	2
(b) If a domestic extension, have any previous extensions/structures been erected at location after 1 st October, 1964, (includ for which planning permission has been obtained)?	is If yes, please provid	e floor areas. (sq m)
(c) If concerning a change of use of land an	/ or building(s), please state t	he following:
Existing) previous use (please circle) WASTE RECTOUNC & TRANSEX FACILITY	Proposed/existing use (please LACILIT)	circle)

Name of applicant (princi	The second secon	
Turne of applicants (pine)	pairmoragemer	ELMNICIC THE RED FOX RECTUNG
Applicants Address	MILL HOL OLD MM COMC	USE COMD
Person/Agent acting on	Name:	ADEN O'NEILL
behalf of the Applicant (if any):	Address:	NOC CAMPUS MARGON, CONC
	Telephone:	
	Fax:	
	E-mail address:	
Should all correspondence (Please note that if the answer is 'No address)		

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question	BENANT	
If you are not the legal owner, please state the name and address of the owner if available	HEL JAMES H-WE,	CLLIND, MILL OLD MALLIN FO. GRIC

Signature:	Ad soluri
Date:	12/12/12/19

6. I / We confirm that the information contained in the application is true and accurate:

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

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ownership of physical

features.

