

Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise a Principal or Assistant Chief Reporter so issues emerging can be considered for future case work

Guidance note:	Development proposal cannot be varied on appeal (section 32A of Act)
Relating to:	Planning permission appeals
Background/ legislative and policy framework:	<p>A key principle behind the process of making an appeal to Scottish Ministers is that the appeal should be based on the same proposal as that before the planning authority at the time that it considered the planning application.</p> <p>Section 32A prohibits an application from being varied after an appeal has been made.</p> <p>Circular 4/2013 (paragraph 12) states that this new provision “provides clarity about the extent to which the appeal process should focus on the proposal that was considered by the planning authority. Where an applicant considers that it would be beneficial to revise a proposal, a new planning application should be submitted...”.</p>
DPEA practice:	<p>Section 32A(3) involves an important departure from the previous position where it was possible for an appellant to amend the application for planning permission at any stage and where amendment was permitted unless it had the effect of altering the character of the application so as to amount, in substance, to a new application.</p> <p>A request to vary the application for planning permission that is the subject of the appeal must, in terms of section 32A, be refused.</p> <p>The plans submitted at appeal should be those considered by the planning authority. However, as the Appeals Regulations do not (currently) require the appellant to provide copies of the plans submitted to the planning authority, the Planning Authority Response Form will ask the planning authority to confirm that DPEA holds the correct plans and, if not, to provide copies. The administration team will pursue these if necessary.</p> <p>Proposals or requests to amend a proposed development, either at the point of making an appeal or during the appeal process, cannot be accepted. We must consider and make a decision, based on the plans which were previously considered by the planning authority at application stage.</p> <p>An appellant may seek to submit revised plans to demonstrate how an issue could be resolved (for example revised access/parking arrangements). Such information should be considered by the</p>

	reporter and may inform his/her decision, but it is the plans submitted with the appeal that form the subject of the final decision.
Process:	<p>Proposed variation during appeal</p> <ul style="list-style-type: none"> Where the appellant seeks to vary the proposed development from that considered by the planning authority, they must be advised that variation is not permitted. We will suggest that, should the appellant wish to amend or revise the proposal, then this should be done by making a new planning application to the planning authority. <p>Terms of appeal decision</p> <ul style="list-style-type: none"> <u>The decision made on a planning appeal must always be made in respect of the proposal and plans previously considered by the planning authority.</u> This must be made clear in the decision notice issued by DPEA, particularly where an appeal is upheld, by including a reference to the plans being approved so that there can be no suggestion that planning permission has been granted for a revised plan. Where revisions to the proposal are submitted as evidence to demonstrate that the reasons for refusal can be overcome, the reporter may wish to consider granting planning permission subject to conditions that resolve the matter in dispute. This may require exclusion/alteration of a particular aspect of the development shown on the appeal plans, or the use of a suspensive condition to require the appellant to obtain the consent of the planning authority on that aspect prior to commencing development. It would not be appropriate to do this where it involved making a substantial change in the description of the development, because permission should not be granted for a different development to the one proposed in the original application. A degree of judgement will be needed on this .
