

**COMHAIRLE CONTAE FHINE GALL
FINGAL COUNTY COUNCIL**

**REPORT ON PROPOSAL TO INITIATE A
VARIATION TO THE FINGAL DEVELOPMENT
PLAN 2023-2029**

**Pursuant to S13(1A) of the Planning and
Development Act 2000 (as amended)**

**Comhairle Contae
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Fingal County
Council



December 2024

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1. Introduction

At the meeting of the Elected Members of Fingal County Council on Monday, 11th November 2024, the following motion from Councillor D. Healy was passed by a vote of 34 votes in favour (“the Motion”). This achieved a total vote which exceeded the $\frac{3}{4}$ threshold required under the Act.

“That the Council, pursuant to S.13 (1A) of the Planning and Development Act, hereby requests the Chief Executive to prepare a report on the following proposal to initiate a process to consider a variation of the Development Plan:

The insertion in the Development Plan of the following: 3.5.9.4 Apartments not designated as Build- to -Rent Policy SPQHP33A Apartment schemes not designated as build-to-rent may be required in their planning decision to offer for sale to the public a proportion of units (other than those covered by a Part V agreement), the proportion, up to 100%, to be determined, taking into consideration the demand in the area, particularly the demand to purchase an apartment to move to/from a larger dwelling.”

The Motion concerns a proposal to initiate the statutory process to vary the Fingal Development Plan 2023-2029 (“the **Development Plan**”). It is noted that the Motion references s.13 (1A) of the Planning and Development Act 2000, as amended (“**the PDA**”) which details the statutory process for making a variation to a development plan. The full text of s.13 (1) and s.13(1A) provides:

- (1) A planning authority may at any time, for stated reasons, decide to make a variation of a development plan which for the time being is in force.*
- (1A) (a) The members of a planning authority may at any time, for stated reasons, submit a resolution to the manager of the planning authority requesting him or her to prepare a report on a proposal by them to initiate a process to consider the variation of the development plan which for the time being is in force where three quarters of the members of that authority have approved such a resolution.*
- (b) The manager of a planning authority shall submit a report further to a request under paragraph (a) to the elected members within four weeks of the adoption of the resolution.*

The making of a variation to a development plan is a reserved function – per ss. 131-132 and Schedule 14-14A of the Local Government Act 2001, as amended.

This document constitutes the report for the purposes of s13 (1A) (b) and as a result, it will address the request/proposal to initiate the variation process under s. 13 as required in the Motion passed by the Elected Members on 11th November 2024.

2. Overview of the Variation Process

Prior to addressing the issue raised in the Motion as passed by the Elected Members, a brief overview of the process which must be followed in varying a development plan under s.13 of the PDA is set out below.

2.1 Initiating a Variation of a Development Plan

Section 13(1) allows for a planning authority, at any time, for stated reasons, to decide to make a variation of a development plan which is in force.

In this instance, in accordance with s.13(1A)(a) of the PDA, it is the Elected Members of the planning authority who have initiated this process by passing the Motion (approved by three quarters of the Elected Members) – requesting that a report be prepared in accordance with the requirements of s.13(1A)(b) of the PDA.

2.2 Public Notices and Notification of Minister, OPR and Regional Authority

Section 13(2) states that where a planning authority proposes to make a variation in a development plan, it must send notices to a number of specified/prescribed bodies including the Minister, the Office of the Planning Regulator (OPR) and the relevant Regional Authority. (see also, *inter alia*, Art.13 of the Planning and Development Regulations 2001, as amended (“**the 2001 Regulations**”).

It must also publish notice of the proposed variation in one or more newspapers circulating in the area stating the reason for the proposed variation and informing the public that written submissions can be made to the planning authority in relation to the proposed variation. Section 13(3) of the PDA outlines that the notices under s.13(2) must include the following information:

“A notice under subsection (2) shall state—

(a) the reason or reasons for the proposed variation,

(b) that a copy of the proposed variation may be inspected at a stated place or places and at stated times during a stated period of not less than 4 weeks (and the copy of the draft variation shall be kept available for inspection accordingly), and

(c) that written submissions or observations with respect to the proposed variation made to the planning authority within the said period will be taken into consideration before the making of the variation.”

Section 13(3)(3A) provides for the Minister or the OPR to make such recommendations as they consider appropriate in relation to the proposed variation.

2.3 Chief Executive's Report on Submissions

In accordance with s.13(4), not later than 8 weeks after giving notice of the proposed variation, the Chief Executive of a planning authority is required to prepare a report on any submissions or observations received and to submit this report to the Elected Members. Amongst other things, this report must provide a summary of:

- the recommendations, submissions and observations made by the Minister, and the OPR;
- the issues raised and recommendations made by the relevant regional assembly;
- the submissions and observations made by any other persons, in relation to the draft development plan in accordance with this section.

The report must also give the response of the Chief Executive to the issues raised, taking account of the proper planning and sustainable development of the area, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or of any Minister of the Government.

2.4 Consideration of the Report and Recommendations from the Minister and OPR

Section 13(5) states that the members of a planning authority shall within 6 weeks of receiving the report from the Chief Executive, consider the proposed variation and the contents of the report. It is important to note that s.13(5)(a)(aa) specifies that:

"Following consideration of the proposed variation and the report of the manager... where a planning authority, after considering a submission of, or observation or recommendation from the Minister, or from the Office of the Planning Regulator... or from a regional assembly... decides not to comply with any recommendation made in the proposed variation and report, it shall so inform the Minister, the Office of the Planning Regulator or regional assembly, as the case may be, as soon as practicable by notice in writing which notice shall contain reasons for the decision".

2.5 Resolution on the Proposed Variation

Section 13(6) sets out how (subject to other provisions relating to Strategic Environmental Assessment/Appropriate Assessment) having considered the proposed variation and Chief Executive's report, the Elected Members may, as they consider appropriate, by resolution, make the variation with or without further modification (subject to s.13(6)(c)), or they may refuse to make it.

2.6 Statutory Obligations to Consider National and Regional Planning Policy

Section 13(7) of the PDA restricts the members of the authority to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant

policies or objectives for the time being of the Government or any Minister of the Government.

Section 13(14) of the Act states that "*statutory obligations*" as referred to above include, amongst other things the obligation to ensure that the development plan is consistent with:

- (i) the national and regional development objectives specified in the National Planning Framework, and the regional spatial and economic strategy, and
- (ii) specific planning policy requirements specified in guidelines under Section 28 of the PDA.

2.7 The Role of the Minister and the OPR in the Variation Process

As stated above, s. 13(3)(3A) provides for the Minister or the OPR to make such recommendations as they consider appropriate in relation to the proposed variation. The role of the Minister and the OPR in relation to the variation process mirrors their role in the development plan process which allows for the Minister to direct a planning authority to take such specified measures as he or she may require in relation to that plan.

These provisions are set out s. 31 of the PDA which, amongst other things, states that the minister may make a direction if he or she is of the opinion that the Planning Authority, in making a development plan or a variation of a development plan, has failed to implement a recommendation made to the planning authority by the Minister or the OPR, or to take account any submission or observation made by the Minister or the OPR.

The role of the OPR is set out in s.31AM of the PDA, which allows for the Office to consider whether or not a variation is consistent with any recommendations made by the Office. Where the OPR is of the opinion that a variation has not been made in a manner consistent with its recommendations, it is required to issue a notice to the Minister containing recommendations that the Minister take such steps to rectify the matter.

2.8 Summary of Key Statutory Requirements in the Variation Process

Having regard to the foregoing, the PDA contains a number of clear requirements which are key to the consideration of a variation of a development plan. These key requirements can be summarised as follows:

- In making a variation to a development plan, Elected Members are restricted to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government.
- The statutory obligations referred to above include the obligation to ensure that the Development Plan is consistent with the national and regional development

objectives and specific planning policy requirements specified in guidelines under s.28 of the PDA.

- The Act provides for the Minister or the OPR to direct a planning authority to take such specified measures as he or she may require in relation to that Plan should the planning authority fail to have regard to the recommendations of the OPR and the Minister.

It is further noted, pursuant to s.28 of the PDA, in carrying out its functions under the PDA, the planning authority is required to "*have regard*" to relevant Ministerial Guidelines – the Development Plan Guidelines (2022), containing guidance on the process involved in varying a development plan.

The following section of this report considers the Motion to initiate a process to make a variation to the Fingal Development Plan 2023-2029 in the context of the key requirements of the PDA as discussed above.

3. Consideration of the Motion to Initiate a Variation:

This section sets out the Chief Executive's consideration of the Motion "requesting [the Chief Executive] to prepare a report on [the] proposal by [the Elected Members] to initiate a process to consider the variation of the development plan which for the time being is in force " – in accordance with the requirements of s.13(1A) of the PDA.

After briefly summarising the initial response to the Motion by the Chief Executive, prepared in advance of the vote on the motion, this section will consider the issues raised by the Motion and how they relate to the requirements of the PDA as outlined in the previous section.

As outlined above, the Development Plan Guidelines (2022) consider the variation process provided for by s.13 of the PDA and in respect of s.13(1A) state (Section 3.9):

"Elected members may submit a resolution to the Chief Executive of the planning authority to request a report on a proposal to initiate a process to consider the variation of a development plan. The motion to request the Chief Executive to initiate varying the plan must be supported by three-quarters of the members of the planning authority. In responding to such a motion, the Chief Executive is required to prepare a report on the proposed variation within four weeks and if he or she considers the proposal is not justified, is required to outline reasons for not initiating the variation process, in writing.

In making a variation, members are restricted to considering the proper planning and sustainable development of the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government."

The said Guidelines also detail:

"In making a variation to the development plan, the proposed variation and the other parts of the plan must continue to be internally consistent i.e. a proposed variation should also address and incorporate any necessary adjustments to other relevant parts of the plan"

3.1 Initial Response by Chief Executive to the Motion as Tabled:

The Chief Executive prepared a response to the Motion as tabled for the full Council meeting on Monday 11th November 2024. This response provided a high-level overview of the PDA as it relates to initiating the variation procedure, before stating that in making resolutions in relation to variations, Elected Members are restricted to considering:

- the proper planning and sustainable development of the area;

- the statutory obligations of any local authority in the area: and
- any relevant policies or objectives of the Government or any Minister of the government.

The Chief Executive's response went on to state that Members must consider whether the content of the proposed variation is appropriate as a variation of the Development Plan and that where a Planning Authority decides to proceed with a variation of a Development Plan, it must follow the statutory process set out under s. 13 of the PDA.

3.2 Consideration of the Content of the Motion:

The Motion passed by the Elected Members calls for the insertion of the following text in Chapter 3 of the Development Plan

3.5.9.4 Apartments not designated as Build- to -Rent Policy SPQHP33A Apartment schemes not designated as build-to-rent may be required in their planning decision to offer for sale to the public a proportion of units (other than those covered by a Part V agreement), the proportion, up to 100%, to be determined, taking into consideration the demand in the area, particularly the demand to purchase an apartment to move to/from a larger dwelling.'

As outlined above, the planning authority (Elected Members), in considering a variation, is restricted to considering:

- The proper planning and sustainable development of the area to which the development plan relates (per s.13(7)).
- The statutory obligations on any local authority in the area (per s.13(7)). In this regard, s.13(14) defines "*statutory obligations*" as including:
 - "(a) in relation to a local authority, the obligation to ensure that the development plan is consistent with—
 - (i) the national and regional development objectives specified in—
 - (I) the National Planning Framework, and
 - (II) the regional spatial and economic strategy, and
 - (ii) specific planning policy requirements specified in guidelines under subsection (1) of section 28..."
- Any relevant policies or objectives for the time being of the Government or any Minister of the Government.

Having regard to the above and in consideration of s.13(7) of the PDA, the Chief Executive's consideration of this motion will be addressed under the following headings.

- Section 28 Guidelines on the Regulation of Commercial Institutional Investment in Housing;
- National and Regional Planning Policies;
- Existing Policies and Objectives in the Development Plan and
- Text of the Policy proposed by the Motion

3.2.1 Section 28 Guidelines on Commercial Institutional Investment in Housing

Section 28 of the PDA empowers the Minister to issue planning guidelines to planning authorities, including where applicable, An Bord Pleanála - regarding any of their functions under the PDA. Planning Authorities are obliged to have regard to any guidelines issued under s. 28 which apply nationally.

Section 28 Guidelines for Planning Authorities "*Regulation of Commercial Institutional Investment in Housing*" were published in 2021 and updated in 2023 and are "*aimed to prevent multiple housing and duplex units being sold to a single buyer*".

The guidelines aim to provide an 'owner occupier' guarantee by ensuring that new 'own-door' houses and duplex units in lower-density housing developments can no longer be bulk-purchased by institutional investors in a manner that causes the displacement of individual purchasers or social and affordable housing, including cost-rental.

Apartments were not included in this measure as the focus of the Guidelines was on protecting traditional family homes while continuing investment where it is needed- i.e. apartment developments which have viability constraints. This remains the case. No change was made to this situation in the 2023 review, with the update specifically stating:

"As the guidelines have now been shown to be successfully implemented and yielding a high rate of home ownership, the next monitoring update will be in June 2024 for a three year review.

Section 2 of these Guidelines references other Section 28 Guidelines on Design Standards for New Apartments, stating that these 'Apartment Guidelines' seek to provide for maximum flexibility and allow for any permitted development to be acquired in full or in part, for private rented sector (PRS) commercial investment purposes, without any specific 'build-to-rent' planning status.

Section 2 of the Section 28 Guidelines on Commercial Institutional Investment in Housing goes on to state that:

"...this level of flexibility is considered necessary to facilitate broad investment in the delivery of increased housing supply, which remains critical. It therefore continues to apply to all apartment development, in order to ensure that undertaking such

development remains viable, especially higher density schemes in established urban areas."

Finally, it should be noted that the Section 28 Apartment Guidelines referenced above apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease.

They also apply to housing developments that include apartments that are built specifically for rental purposes, whether as 'build to rent' or that were originally permitted or built as 'shared accommodation' that may subsequently be proposed as standard apartment development and unless stated otherwise, they apply to both private and public schemes.

In conclusion, the proposed variation to the Development Plan as set out, would be inconsistent with the foregoing Guidelines issued under s.28 of the PDA.

3.2.2 National and Regional Planning Policy

As noted above, Planning Authorities must have regard to any guidelines issued under s. 28, and these Guidelines apply nationally. The PDA does not provide for Local Authorities to modify the operation of Section 28 Guidelines by adding to them/providing adjustments so as to go beyond their initial scope.

The Section 28 policy documents discussed in the previous section effectively represent national government policy and, in this respect, are cognisant of the differences which currently exist regarding ownership controls on different types of housing development - including apartments, multi-unit house and duplex developments.

This distinction cannot be viewed as an oversight which could be addressed by a variation to the Development Plan but should rather be regarded as national government policy on the ownership of different types of housing developments.

In this regard, it should be noted that the PDA specifically provides for the Minister and the Office of the Planning Regulator to intervene to prevent Planning Authorities adopting Development Plans or Variations to Development Plans which, in their opinion, would contravene national planning policy.

In addition, it should be noted that Regional Assemblies, including the Eastern and Midlands Regional Authority (EMRA), also have a role in ensuring that Development Plans and Variations to Development Plans accord with the provisions of the Regional Spatial and Economic Strategy (RSES) for their area.

Having regard to the text of the proposed variation, it is likely that EMRA in any submission, could point to the fact that the introduction of a measure which could impact the provision of a particular housing type by one Local Authority, could have a distorting effect on the delivery of housing by other Local Authorities in the same region.

This last issue highlights the potential unintended consequences of the introduction of additional restrictions on specific forms of residential development as such restrictions could undermine policies aimed at increasing overall housing supply by creating additional hurdles for the delivery of new housing developments which is a central government policy.

3.2.3 Text of the Policy Proposed by the Motion

In relation to the text of the proposed policy, it should be noted that the Development Plan Guidelines for Planning Authorities require policies and objectives of the Development Plan to be, *inter alia*, capable of implementation and should be referenced against an indicator for the purposes of monitoring.

In this instance, it is unclear how this is to be measured - i.e. there is an element of subjectivity to be applied, -taking into account the demand in the area, particularly the demand to purchase an apartment to move to/from a larger dwelling.' This may present particular issues in determining when to apply the policy as a condition to a grant of permission and would be likely to operate on a case-by-case basis, rather than have widespread applicability depending on the situation presenting.

In addition, the text of the proposed planning policy is unclear in terms of the definition of what would constitute "the public". As proposed, the proposed additional policy would not preclude private individuals from purchasing multiple units to rent on the private market. Conversely, it could however, potentially restrict certain housing bodies from purchasing multiple units in a particular development in order to address a specific social need (for example to provide housing for people with disabilities).

Finally, it should be noted that the insertion of the proposed additional text is not consistent with the overall structure of the relevant section of the Development at pages 128 and 129 (see screenshots of both pages below).

The proposed additional Section '3.5.9.4 Apartments not designated as Build- to -Rent would be included as a heading without any explanatory text provided, as was included for Section 3.5.9.3 Build to Rent (see screenshot of page 128 of the Development Plan below). This could cause additional uncertainty for potential applicants for new residential development.

3.5.9 Housing Types

3.5.9.1 Social and Affordable Housing

Social housing performs a key function in society, ensuring that households who do not have sufficient resources to meet their housing needs are provided with support. Under *Housing for All: A New Housing Plan for Ireland*, the Government has ambitious plans to average over 10,000 social housing homes annually for the next five years and to continue to build social housing to 2030. Given the current supply challenges, it will be necessary to continue to provide social housing via the private rental market to ensure that those who are most vulnerable in society can access support immediately. As new build supply of social housing ramps up, it is anticipated that there will be reducing reliance on assistance such as the Housing Assistance Payment (HAP) and the Rental Accommodation Scheme (RAS). Approved Housing Bodies (AHBs) have been significant partners with local authorities in social housing delivery in Fingal and will continue to have a significant role in new Local Authority Delivery Action Plans which are to be prepared by individual Local Authorities by December 2021 covering a five-year period. The Plans will set out how the Local Authority will deliver their housing targets, including the delivery of affordable homes. In addition, the Dublin Housing Delivery Group, of which Fingal is a partner, has been set up to co-ordinate and drive delivery of social and affordable housing in the Dublin region.

In addition to the continued implementation of Part V of the *Planning and Development Act 2000, (as amended)* the Council will work in partnership with the Department of Housing, Local Government, and Heritage, Approved Housing Bodies, and other key stakeholders to deliver and manage social housing. Other mechanisms of delivery will include direct build, acquisitions, void management, long term leasing, enhanced leasing, repair to lease, and private rental (RAS and HAP).

3.5.9.2 Cost Rental

A new statutory basis is being established for Cost Rental under the Affordable Housing Act 2021, which sets out how this new sector will operate. Under Cost Rental, homes will be provided at rents that are set to cover only the cost of financing, building, managing and maintaining the homes, calculated over a minimum period of 40 years. Tenants will have significantly increased security of tenure, making Cost Rental a long-term rental option. Rents for these homes will be linked to annual inflation, providing greater cost certainty. This measure is being targeted at middle income households, with incomes above the social housing limits with the aim of maximising effectiveness for those who do not already receive support from the State.

3.5.9.3 Build to Rent

It is an objective of the Council to facilitate the provision of Build-to-Rent Accommodation in suitable locations in accordance with the provisions of *Sustainable Urban Housing: Design Standards for New Apartments 2020*. Build to Rent serves an important role in meeting housing demand and provides an additional housing tenure option in the market. It is important to ensure however, that no one housing type dominates and a mix of housing options and tenures is preferable in achieving a sustainable housing mix. Build to Rent Schemes should be located close to high quality public transport networks, settlement and employment centres.

Policy SPQHP29 – Housing for All

Support the initiatives proposed under *Housing for All – A New Housing Plan for Ireland* in providing for Fingal's requirements for social affordable and cost-rental housing provision within Fingal, including with a focus on the development of publicly owned sites with support from State agencies where appropriate and the preparation of Local Authority Delivery Action Plans.

Policy SPQHP30 – Social, Affordable and Cost Rental Housing

Promote the provision of social, affordable and cost rental housing in accordance with the Fingal County Council Housing Strategy, Part V of the *Planning and Development Act 2000, (as amended)* by the *Affordable Housing Act 2021* and government policy as outlined by the Department of Housing Local Government and Heritage *Housing for All – A New Housing Plan for Ireland* to 2030.

Policy SPQHP31 – Housing Type and Tenure

Support Local Authorities, Approved Housing Bodies and other sectoral agencies in the provision of a greater diversity of housing type and tenure including social and affordable housing and explore new models of low-cost rental and affordable home ownership.

Policy SPQHP32 – Build to Rent

The Council will facilitate the provision of Build-to-Rent Accommodation in suitable locations within Fingal in accordance with the provisions of *Sustainable Urban Housing: Design Standards for New Apartments 2020*.

Policy SPQHP33 – Applications for Build to Rent Schemes

Applications for BTR schemes shall be required to be accompanied by an assessment of other permitted BTR developments in the vicinity (3km) of the site including a map showing all such facilities to demonstrate that the development would not result in the overconcentration of one housing tenure in a particular area. In assessing the matter of overconcentration, the Planning Authority will have regard to factors such as:

- The number and scale of other permitted BTR development in the vicinity (3km) of the site.
- The household tenure and housing type of existing housing stock in the approximate vicinity (3km) of the site and
- The proximity of the proposal to high-capacity public transport stops and interchange (such as DART, MetroLink, LUAS and BusConnects).

3.5.10 Housing Typologies in Fingal

3.5.10.1 Apartments, Houses and Adaptable Homes

A suitable mix of housing types should be provided in new residential areas to meet the needs of residents. The provision of quality housing which is suitable for citizens throughout their lives and adaptable to people's changing circumstances is fundamental to creating compact towns and villages. Housing, whether

3.2.4 Existing Policies and Objectives in the Fingal County Development Plan

The last consideration relates to the fact that the Fingal Development Plan already contains a number of policies and objectives in relation to achieving a mix of unit types, including measures to achieve down-sizing/right-sizing. In this regard, the following policies and objectives are contained in the adopted Development Plan:

- Policy SPQHP20 – Adaptable and Flexible Housing
- Policy SPQHP21 – Accessibility
- Objective SPQHO18 – Age Friendly Principles
- Objective SPQHO19 – Range of Housing Options for Older People
- Objective SPQHO20 – Dementia Issues in the Built Environment
- Objective SPQHO21 – Adapting Homes and Intergenerational Living
- Objective DMSO37 – Age Friendly Housing.

These policies in conjunction with supporting housing and development management policies and objectives contained within the Development Plan, currently provide a robust basis for the provision of suitable housing options at appropriate locations.

4. Conclusion

This document constitutes the report referred to in s.13(1A)(b) of the PDA.

In accordance with the provisions of the Act, this report has been provided to the Elected Members within four weeks of the adoption of a resolution to make a variation to the Fingal County Development Plan on Monday 11th November 2024.

As required under s.13(7) of the PDA, in making a variation under this section, the members of the authority shall be restricted to considering:

- The proper planning and sustainable development of the area to which the development plan relates (per s.13(7)).
- The statutory obligations of any local authority in the area (per s.13(7)). In this regard, s.13(14) defines "*statutory obligations*" as including:
 - "(a) in relation to a local authority, the obligation to ensure that the development plan is consistent with—
 - (i) the national and regional development objectives specified in—
 - (I) the National Planning Framework, and
 - (II) the regional spatial and economic strategy, and
 - (ii) specific planning policy requirements specified in guidelines under subsection (1) of section 28..."
- Any relevant policies or objectives for the time being of the Government or any Minister of the Government.

In this regard and as set out in this report, the proposal to vary the Development Plan in the manner proposed has been considered against the criteria specified under S.13(7) of the PDA. In this regard, the proposal is considered not to be consistent with the proper planning and sustainable development of the area and furthermore, would not be consistent with the statutory obligations of the local authority and would not be consistent with the policies and objectives of ministerial guidelines under s. 28 of the PDA.

5. Recommendation:

In conclusion, it is the recommendation of the Chief Executive that the proposal to vary the Fingal Development Plan 2023-2029 in the manner proposed would not be consistent with the criteria stipulated under s.13(7) of the PDA, which criteria the Elected Members of the local authority are restricted to considering in making a variation.