

DATED

2026

(1) WILTSHIRE COUNCIL

and

(2) BACKHOUSE (WESTBURY) JV LIMITED

**DEED OF VARIATION PURSUANT TO SECTION 106A
OF THE TOWN AND COUNTRY PLANNING ACT 1990**

relating to Land at former Westbury Hospital, The Butts,
Westbury BA13 3EL (Planning Application Number:
PL/2023/07503)

IKEN 202764

Head of Legal Services
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

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PARTIES

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 8JN (the "**Council**"); and
- (2) **BACKHOUSE (WESTBURY) JV LIMITED** (Co. Regn. No. 10952438) of B2 Methuen South, Methuen Park, Chippenham, Wiltshire, SN14 0GT (the "**Owner**")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Act in respect of land at former Westbury Hospital, The Butts, Westbury BA13 3EL ("the Land") and by whom the obligations in the Principal Agreement as amended by this Deed of Variation and Discharge are enforceable
- (B) The Owner is the registered proprietor of the Land with freehold title absolute registered under title number WT437372 at the Land Registry
- (C) The Owner's predecessor in title NHS Property Services Limited entered into the Original Agreement with Wiltshire Council as a prerequisite to the grant of the Original Planning Permission
- (D) The Owner has submitted the Section 73 Planning Application to the Council and the Parties have therefore agreed that the Principal Agreement should be varied as follows

1. INTERPRETATION AND DEFINITIONS

1.1. In this Deed, unless the context otherwise requires:

"The Original Agreement"	means the agreement dated 27 February 2017 made between (1) the Council (2) NHS Property Services Limited
"The Original Planning Permission"	means the planning permission reference 15/11604/OUT for the erection of up to 58 dwellings, public open space, associated access and drainage works granted on 28 February 2017
"RoSPA"	means The Royal Society for the Prevention of Accidents (or any successor body) and includes any inspection service

	authorised by or operating under licence from it in respect of the inspection and certification of children's play areas and associated equipment.
"RoSPA Public Open Space Site Review"	means an independent written report relating to the Open Space prepared by a RoSPA inspector and approved by the Council, confirming that the Open Space has been inspected and is fit for its intended use and comply with all relevant health and safety requirements, applicable standards and good practice guidance as applicable at the time of the review.
"Section 73 Planning Permission"	means the planning permission that may be granted pursuant to Section 73 of the Planning Application
"Section 73 Planning Application"	means the application pursuant to Section 73 of the 1990 Act for the Variation of Conditions 5,6,7 of 15/11604/OUT- To become compliance conditions relating to the installed surface water drainage scheme and its associated maintenance regime registered by the Council on 20 October 2023 and given reference PL/2023/07503

1.2. In this Deed, unless the context otherwise requires:

1.2.1. References to clauses paragraphs and schedules are references to those in the Original Agreement; and

1.2.2. Words and phrases whose meanings are not varied by this Deed of Variation have the same meanings as in the Original Agreement

1.3. This Deed of Variation is supplemental to the Original Agreement which is enforceable by the Council and which binds each and every part of the Land

- 1.4. This Deed of Variation is entered into by the Parties pursuant to Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers

2. CONDITIONALITY

- 2.1. This Deed shall take effect upon the date of the grant of the Section 73 Planning Permission

3. VARIATION/DISCHARGE OF PLANNING OBLIGATIONS OF THE ORIGINAL AGREEMENT

- 3.1 The parties agree that:

- 3.1.1 The planning obligations contained in paragraphs 1, 2 and 4 to 8 of Schedule 4 of the Original Agreement shall be discharged and shall cease to have effect from the date of this Deed.

- 3.1.2 In the definition of “Open Space” reference to plan 023-002 Rev B shall be deleted and replaced with a reference to plan 074-003 P2 (annexed hereto).

- 3.1.3 Paragraphs 1 to 5 of Schedule 2 shall be replaced as follows:

“1. Submit the Landscape Plan and the Management Scheme to the Council for the Council’s approval (such approval not to be unreasonably withheld) within three (3) calendar months from 2026 ;

2. Notify the Council in writing within seven (7) Working Days of completion of the laying out of the Open Space and/or Play Area(s) comprised in the Development and/or the laying out of the SUD Infrastructure and in any case no later than six (6) months from 2026 and to provide the details of the respective designated contact for queries regarding the Open Space and Play Area(s) and SUD Infrastructure and request inspection(s) by the Council as local drainage authority as the case may be;

3. Ensure or procure that, within the timeframes and in accordance with the covenants stipulated within paragraphs 1 to 5 of Part II of Schedule 6 of this Deed:

3.1 The Open Space Practical Completion Certificate and the Play Area(s) Certificate for the Development have been issued in accordance with the Landscape Plan approved by the Council; and

3.2 The Open Space and Play Area(s) for the Development have been made available for public use; and

3.3 Prominent sign(s) indicating who is responsible for maintaining the SUD Infrastructure, the Open Space and the Play Area(s) have been erected on the relevant areas and are kept in good and legible condition at all times.

4. Ensure or procure that within the timeframes and in accordance with the conditions stipulated within paragraphs 1 to 5 of Part II of Schedule 6 of this Deed:

4.1 The SUD Infrastructure is designed provided laid out and equipped in accordance with the SUD Plan approved by the Council and save for the landscaping which shall be implemented in the first planting season following completion of the civil engineering works;

4.2 The SUD Completion Certificate has been issued;

4.3 the SUD Infrastructure has been made available for public use”.

3.2 Paragraph 12 of Schedule 2 of this Deed shall be amended as follows:

“Complete the transfer of the freehold of the Open Space, the Play Area and the SUD Infrastructure to the Management Company no later than twenty (20) Working Days after the issue date of the Open Space Practical Completion Certificate, the Play Area Certificate and the SUD Completion Certificate, respectively, or any other time agreed by the Council and the Owner, in accordance with the provisions of paragraphs 14-16 of this Schedule and the Open Space, Play Area and the SUD Infrastructure shall thereafter be maintained in perpetuity in accordance with the approved Management Scheme and SUD Plan as the case may be (unless otherwise agreed with the Council)”.

3.3 A new paragraph 3A will be added between paragraphs 3 and 4 which shall read as follows:

“Upon completion of the laying out of the Open Space, commission a RoSPA Public Open Space Site Review for the Open Space and at the Council’s reasonable request, if deemed necessary, following any remedial actions specified in any Remedial Notice for the Open Space, the Owners shall commission a further RoSPA Public Open Space Site Review for the Open Space. Any such review shall be commissioned at the Owner’s expense and be submitted to the Council within five (5) Working Days from the date the outcome of such review has been shared with the Owner”;

1.3.4 At the end of paragraph 2 of Part II of Schedule 6, add the following wording after “having taken place”:

“Provided that a RoSPA Public Open Space Site Review has been shared with the Council in accordance with paragraph 3A of Schedule 2 of this Deed in the case of the Open Space Practical Completion Certificate and any Remedial Notice for the Open Space, the Open Space Practical Completion Certificate or any Remedial Notice for the Open Space will be issued within ten (10) Working Days from the day that a RoSPA Public Open Space Site Review has been submitted to the Council following paragraph 3A of Schedule 2 of this Deed.”

Save as expressly discharged or varied by this Deed, all other provisions of the Original Agreement shall remain in full force and effect.

4. DECLARATIONS

Other than as varied by this Deed the Original Agreement shall continue in full force and effect

5. REGISTRATION

This Deed of Variation shall be registered as a local land charge by the Council under the Local Land Charges Act 1975

6. COSTS

The Owner agrees to pay to the Council's reasonable legal costs incurred by the Council in the negotiation and preparation of this Deed of Variation together with the Council's on completion of this Deed of Variation

7. THIRD PARTY RIGHTS

7.1. A person who is not named in this Deed of Variation does not have any right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999

7.2. This Deed of Variation is governed by and interpreted in accordance with the laws of England and Wales

8. EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed

Executed as a deed by affixing The
common seal of WILTSHIRE
COUNCIL

in the presence of:

Authorised signatory

.....

EXECUTED as a DEED by
BACKHOUSE (WESTBURY) JV LIMITED
acting by a Director in the presence of

.....

.....
Director

.....

Witness name.....

Witness occupation.....

Witness address.....

.....

.....

Open Space Plan

