

DATED 28th June 2017

SUE GP LLP and (1)  
SUE GP NOMINEE LIMITED

RUGBY RADIO STATION (GENERAL (2)  
PARTNER) LIMITED and RUGBY  
RADIO STATION (NOMINEE) LIMITED  
as TRUSTEES OF RUGBY RADIO  
STATION LIMITED PARTNERSHIP

HOMES AND COMMUNITIES AGENCY (3)

RUGBY BOROUGH COUNCIL (4)

and

WARWICKSHIRE COUNTY COUNCIL (5)

---

DEED OF VARIATION

made pursuant to Section 106A of the  
Town and Country Planning Act 1990  
relating to land at Rugby Radio Station

---

MILLS & REEVE

Contents

1	Definitions and Interpretation.....	2
2	Legal basis.....	3
3	Variation of the 2014 Agreement.....	3
4	Miscellaneous .....	3
5	HCA consent and liability of mortgagees.....	4
6	Jurisdiction.....	4
7	Counterparts .....	4
8	Delivery .....	4
	Schedule 1 – Site.....	5
	Schedule 2 – Variation of the 2014 Agreement.....	6

This Deed of agreement is dated

28th June

2017

## PARTIES

- (1) **SUE GP LLP** (LLP registration number OC392673) and **SUE GP NOMINEE LIMITED** (company registration number 09000390) ("the **First Owner**")
- (2) **RUGBY RADIO STATION (GENERAL PARTNER) LIMITED** (Company Registration No. 04944892) and **RUGBY RADIO STATION (NOMINEE) LIMITED** (Company Registration No. 04943904) as trustees of **RUGBY RADIO STATION LIMITED PARTNERSHIP** (Company Registration No LP009085) ("the **Second Owner**")
- (3) **HOMES AND COMMUNITIES AGENCY** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7HQ ("the **HCA**")
- (4) **RUGBY BOROUGH COUNCIL** of Town Hall Evreux Way Rugby Warwickshire CV21 2RR ("**Borough Council**")
- (5) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall Warwick Warwickshire CV34 4RL ("**County Council**")

## INTRODUCTION

- (A) The Borough Council is the local planning authority for the purposes of the Act for the area in which the Site and the Further Land are situated.
- (B) The County Council is the local highway authority and the local authority for statutory age education and pre statutory age education and childcare and is also the local planning authority for the area in which the Site is situated.
- (C) This deed relates to the Site subject to the terms hereof. As a result of a transfer of part of title WK460498 dated 10 April 2014, a transfer of part of titles WK446600 and WK255907 dated 15 April 2014, and a transfer of a portfolio of titles dated 16 April 2015, between them the First Owner and the Second Owner (together, "**the Owners**") own the freehold of the Site, which is now contained in the title numbers referred to in Schedule 1 of this Deed.
- (D) The HCA is the registered proprietor of the charge dated 21 March 2016 granted by the First Owner over part of the Site ("**the HCA Charge**") and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (E) SUE Developments LP has submitted the Application B to the Borough Council and the Borough Council has decided to grant Planning Permission B subject to the prior completion of this Deed.
- (F) This Deed is entered into under section 106A of the Act and is supplemental to the 2014 Agreement.
- (G) Without prejudice to the other terms contained in the 2014 Agreement the parties to this Deed have agreed to vary the terms of the 2014 Agreement as set out in this Deed.

**NOW THIS DEED WITNESSES** as follows:

## **1 Definitions and Interpretation**

1.1 The following words and phrases shall unless the context otherwise requires bear the following meanings:

**"2014 Agreement"** the agreement made pursuant to section 106 of the Act dated 21 May 2014 between Rugby Radio Station (General Partner) Limited and Rugby Radio Station (Nominee) Limited as trustees of Rugby Radio Station Limited Partnership (1) the Borough Council (2) and the County Council (3) as varied by the First DoV

**"2014 Permission"** the planning permission as originally defined as the Planning Permission in the 2014 Agreement

**"First DoV"** the agreement made pursuant to section 106A of the Act dated 25 May 2017 between the parties to this Deed

**"Application B"** the application for outline planning permission submitted to the Borough Council for Development B on the Application Site and allocated reference number R17/0022 such application being made under section 73 of the Act

**"Development B"** the development of the Application Site as permitted by Planning Permission B for the same development described in Schedule 1 Part 2 of the 2014 Agreement

**"Planning Permission B"** planning permission granted on Application B

1.2 Where in this Deed reference is made to any clause, paragraph, Schedule (including Part), Annex or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, Schedule (including Part), Annex or recital in this Deed.

1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

1.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

1.6 The headings and contents list are for reference only and shall not affect construction.



1.7 Where in any Schedule or part of a Schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that Schedule or (if relevant) part of a Schedule.

1.8 Where words and expressions used in this Deed are not defined in this Deed but are defined in the 2014 Agreement they shall have the same meaning in this Deed as they do in the 2014 Agreement.

## **2 Legal basis**

2.1 As herein provided this Deed is completed pursuant to section 106A of the Act.

## **3 Variation of the 2014 Agreement**

3.1 Pursuant to section 106A of the Act the Owners, the Borough Council and the County Council agree that the 2014 Agreement shall be varied as set out in Schedule 2 to this Deed with effect from the date hereof.

3.2 Save as provided for in this Deed the provisions of the 2014 Agreement remain unchanged in relation to the Site.

## **4 Miscellaneous**

4.1 The Owners shall pay to the Borough Council and to the County Council on completion of this Deed the respective reasonable legal costs of the Borough Council and the County Council incurred in the negotiation, preparation and execution of this Deed.

4.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

4.3 This Deed shall be registrable as a local land charge by the Borough Council.

4.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

4.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than Planning Permission B granted (whether or not on appeal) after the date of this Deed.

4.6 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Borough Council and County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

4.7 The parties acknowledge that:

4.7.1 in the event the Owner implements Planning Permission B (or any Section 73 Permission) by carrying out a material operation as defined in section 56(4) of the Act, the effect of this Deed is that the Obligations as contained in the 2014 Agreement and as varied by this Deed (unless already discharged at the date of this Deed) shall have effect as if the development carried out under Permission B (or any Section 73

Permission as may be relevant) was development pursuant to the 2014 Permission; and

- 4.7.2 the performance against or discharge of any Obligations in the 2014 Agreement shall satisfy the same in relation to Planning Permission B (or any Section 73 Permission).

## **5 HCA consent and liability of mortgagees**

- 5.1 The HCA acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in or varied pursuant to this Deed and that the security of the HCA Charge over the Site shall take effect subject to this Deed **PROVIDED THAT** the HCA shall have no liability under this Deed or the 2014 Agreement unless it takes possession of the Site pursuant to the HCA Charge in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.
- 5.2 Any mortgagee or chargee acquiring security over the Site or any part of it following completion of this Deed shall be bound by the obligations contained in or varied pursuant to this Deed and the security of its mortgage or charge shall take effect subject to this Deed **PROVIDED THAT** such mortgagee or chargee shall have no liability under this Deed or the 2014 Agreement unless it takes possession of the Site or any part of it pursuant to the relevant mortgage or charge in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

## **6 Jurisdiction**

- 6.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the jurisdiction of the courts of England and Wales.

## **7 Counterparts**

- 7.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Deed, but all the counterparts shall together constitute the same Deed. No counterpart shall be effective until each party has executed at least one counterpart.

## **8 Delivery**

- 8.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

**Schedule 1 – Site**

All those pieces or parcels of land comprised in the following title numbers:

WK472736

WK374560

WK478375

WK472850

WK391310

## Schedule 2 – Variation of the 2014 Agreement

- 1 In clause 1 of the 2014 Agreement there shall be inserted the definitions such that the same appear in alphabetical order, within the definitions in the said clause:

**“Section 73 Application”** an application made under section 73 of the Act which seeks to obtain the grant of permission for the Development without compliance with a condition imposed on the Planning Permission and which the Borough Council (in its sole discretion) considers may be granted only if the obligations in this Deed are applied to regulate the Development. For the avoidance of doubt, the Borough Council may (in its sole discretion) decline to apply the obligations in this Deed and refuse the Section 73 Application or may require (as a pre-requisite to the grant of the Section 73 Permission) additional or revised obligations through a new deed as it considers appropriate

**“Section 73 Permission”** any planning permission granted on a Section 73 Application

- 2 In the definition of **“Allotments”** within clause 1 of the 2014 Agreement after the words “land set aside” there shall be inserted the words:

“as permitted pursuant to the Planning Permission”

- 3 In the definition of **“Application”** within clause 1 of the 2014 Agreement after the expression “reference number R11/0699”, there shall be inserted the words:

“including any Section 73 Application”

- 4 In the definition of **“Development”** within clause 1 of the 2014 Agreement after the words “Schedule 1 Part 2” there shall be inserted the words:

“or as described in any Section 73 Permission”

- 5 In the definition of **“Employment Space”** within clause 1 of the 2014 Agreement after the words “of buildings” there shall be inserted the words:

“within an Employment Reserved Matters Area”

- 6 In the definition of **“Open Space”** within clause 1 of the 2014 Agreement after the words “any of those areas” there shall be inserted the words:

“of open space as permitted pursuant to the Planning Permission”

- 7 In the definition of **“Open Space Delivery and Management Plan”** within clause 1 of the 2014 Agreement after the words “ and attached hereto” there shall be inserted the words:

“or as the context requires such equivalent as may be related to any Section 73 Permission”



8 In the definition of "**Orchard**" within clause 1 of the 2014 Agreement after the words "land set aside" there shall be inserted the words:

"for the purposes of the Development"

9 In the definition of "**Planning Condition**" within clause 1 of the 2014 Agreement after the words "the Planning Permission" there shall be inserted the words:

"and any Planning Condition references shall be construed by reference to the relevant Planning Permission including to the extent of using a numeric reference different from any which is stated in this Deed".

10 In the definition of "**Planning Permission**" within clause 1 of the 2014 Agreement, after the words "Planning Permission" there shall be inserted the words:

"including for the avoidance of doubt any Section 73 Permission (save for the purposes of recital E and clauses 4.1 and 11.7)

11 In the definition of "**Site Wide Obligations**" within clause 1 of the 2014 Agreement after "52" there shall be inserted "52A"

12 In the definition of "**Supplemental Deed**" within clause 1 of the 2014 Agreement after the words "at Annex H" there shall be inserted the words:

"including any amendments which are appropriate to reflect any variation of this Deed"

13 In clause 11 there shall be inserted a sub-clause 11.10 as follows:

"11.10 In the event that a Section 73 Permission is approved and it is agreed that the terms of this Deed (including any Annex or matter appended) should be applied to the Section 73 Permission a memorandum of the same shall be noted on this Deed"

73/17

( Executed as a deed by **RUGBY BOROUGH**  
( **COUNCIL** by the affixing of its common seal  
( and delivered in the presence of:

*D. Howell*

Authorised signatory

Authorised signatory

( Executed as a deed by **WARWICKSHIRE**  
( **COUNTY COUNCIL** by the affixing of its  
( common seal and delivered in the presence  
( of:

Authorised signatory

Authorised signatory

( Executed as a deed by **RUGBY BOROUGH**  
( **COUNCIL** by the affixing of its common seal  
( and delivered in the presence of:

it

Authorised signatory

Authorised signatory



853/17

( Executed as a deed by **WARWICKSHIRE**  
( **COUNTY COUNCIL** by the affixing of its  
( common seal and delivered in the presence  
( of:

*Alise F. [Signature]*

Authorised signatory

~~Authorised signatory~~

( Executed as a deed by **SUE GP LLP** acting  
( by:

"



Member



Member

( Executed as a deed by **SUE GP NOMINEE**  
( **LIMITED** acting by two directors or a director  
( and its secretary:



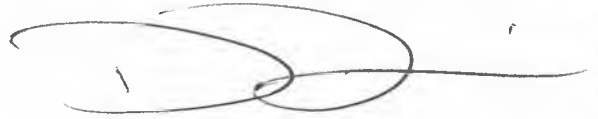
Director



Director/Secretary



( Executed as a deed by **RUGBY RADIO**  
( **STATION (GENERAL PARTNER) LIMITED**  
( acting by two directors or a director and its  
( secretary:



Director



Director/Secretary

( Executed as a deed by **RUGBY RADIO**  
( **STATION (NOMINEE) LIMITED** acting by two  
( directors or a director and its secretary:



Director



Director/Secretary

( Executed as a deed by **RUGBY RADIO**  
( **STATION (GENERAL PARTNER) LIMITED**  
( acting by two directors or a director and its  
( secretary:



Director



Director/Secretary

( Executed as a deed by **RUGBY RADIO**  
( **STATION (NOMINEE) LIMITED** acting by two  
( directors or a director and its secretary:



Director



Director/Secretary

( The common seal of **HOMES AND**  
( **COMMUNITIES AGENCY** is hereunto affixed  
( " in the presence of

Name

Authorised Signatory



Jackie Jacor  
Executive Director  
Programmes

RS7277  
Jackie Jacor