

DATED 25th May 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

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This Deed of agreement is dated

25th May

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) 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.
- (F) This Deed is entered into under section 106A of the Act and is supplemental to the 2014 Agreement.

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)

"Early Parcels Plan" the plan so marked as attached to this Deed at Schedule #5

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.

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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 This Deed shall cease to have effect^a (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 4.6 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 the Planning Permission granted (whether or not on appeal) after the date of this Deed.
- 4.7 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.

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5 HCA consent

- 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 this Deed and that the security of the HCA Charge over the Site shall take effect subject to this Deed^b **PROVIDED THAT** the HCA^b 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.

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** (or any successors or assigns of the HCA)

6 Jurisdiction

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- 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.

* and the 2014 Agreement

7 Delivery

7.1 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 – plan reference A

WK374560 – plan reference B

WK478375 – plan reference B

WK472850 – plan reference C

WK391310 – plan reference D

Schedule 2 – Variation of the 2014 Agreement

- 1 In the definition of "**Affordable Housing Parcel Scheme**" within clause 1 of the 2014 Agreement before the words "is in conformity with the relevant Key Phase Affordable Housing Delivery Plan", there shall be inserted the words:
- "subject to the Key Phase 1/2 Affordable Housing Delivery Arrangements".
- 2 In the definition of "**Certification Procedure**" within clause 1 of the 2014 Agreement, after the words "set out in Annex F" there shall be inserted the words:
- "or such other procedure as may from time to time be agreed between the Owner and the Borough Council".
- 3 In clause 1 of the 2014 Agreement between the definitions of "**Dwelling**" and "**Early Works Approval**" there shall be inserted the definitions:
- | | |
|--|--|
| " Early Parcels " | the Early Parcels (Blue) and the Early Parcels (Green) |
| " Early Parcels (Blue) " | the land shown edged bold blue on the Early Parcels Plan |
| " Early Parcels (Green) " | the land shown edged green on the Early Parcels Plan |
| " Early Parcels Plan " | the plan so marked and attached hereto |
| " Early Parcels With Affordable Housing " | those Early Parcels (Green) that are hatched in green on the Early Parcels Plan" |
- 4 In the definition of "**Identified**" within clause 1 of the 2014 Agreement:
- 4.1 after the words "1. for a School Site/School – identified on a plan approved pursuant to Obligation 1" there shall be inserted the words:
- "or in the place of any particular area of School Site/School so Identified, such other site as the Owner and the County Council may subsequently agree to substitute for it."
- 4.2 after the words "3. for Open Space - identified as such within a Reserved Matters Area" there shall be inserted the words:
- "or in the place of any particular area of Open Space so Identified, such other land as the Owner and the Borough Council may subsequently agree to substitute for it."
- 4.3 after the words "6. for a Community Facility – identified as such within a Reserved Matters Area" there shall be inserted the words:

"or in the place of any particular Community Facility so Identified, such other land as the Owner and the Borough Council may subsequently agree to substitute for it."

- 4.4 as a new paragraph at the end of the definition (and not as part of the numbered list), there shall be inserted the words:

"For the avoidance of doubt, if the Owner and the Borough Council or as the case may be the County Council agree a substituted School Site, Open Space or Community Facility, any Obligation(s) in respect of which the relevant School Site, Open Space or Community Facility is Land Bound separately from the rest of the Site shall thereafter relate to and be enforceable in relation to the land so substituted and shall cease to relate to and be enforceable in relation to the land previously Identified."

- 5 In clause 1 of the 2014 Agreement between the definitions of **"Key Phase 1"** and **"Key Phase 1 Affordable Housing Quanta"** there shall be inserted the definition:

"Key Phase 2" the second Key Phase (in time) in relation to which the requirements of Planning Condition 9 have been satisfied"

- 6 In the definition of **"Key Phase 1 Affordable Housing Quanta"** within clause 1 of the 2014 Agreement before the words "the provision of the following percentages of Affordable Housing in Key Phase 1:", there shall be inserted the words:

"subject to the Key Phase 1/2 Affordable Housing Delivery Arrangements"

- 7 In clause 1 of the 2014 Agreement between the definitions of **"Key Phase 1 Affordable Housing Quanta"** and **"Key Phase Affordable Housing Delivery Plan"** there shall be inserted the definition:

"Key Phase 1/2 Affordable Housing Delivery Arrangements" the arrangements for the delivery of Affordable Housing on Key Phase 1 and Key Phase 2 approved by the Borough Council as set out in Annex J"

- 8 In the definition of **"Key Phase Affordable Housing Delivery Plan"** within clause 1 of the 2014 Agreement before the words "in relation to a Key Phase a scheme for the delivery of Affordable Housing on that Key Phase", there shall be inserted the words:

"subject to the Key Phase 1/2 Affordable Housing Delivery Arrangements"

- 9 In the definition of **"Primary School Site"** within clause 1 of the 2014 Agreement after the words "with a site area of 2.5 hectares for the First Primary School Site and 2 hectares for the other Primary School Site which is not co-located with the Secondary School Site, with the Primary School Site which is so co-located being part of a total site of 10 hectares" there shall be inserted the words:

"or in each case such other area as may be agreed by the Owner and the County Council"

- 10 In the definition of "Primary SEN Payment" within clause 1 of the 2014 Agreement the words:

"(there being six such payments required by this Deed totalling Six Hundred and Seventy Nine Thousand Four Hundred and Four Pounds (£679,404) payable in accordance with obligation 12"

shall be deleted and replaced with:

"(there being five such payments required by this Deed totalling Five Hundred and Sixty Six Thousand One Hundred and Seventy Pounds (£566,170) payable in accordance with obligation 12)"

- 11 In the definition of "SEN Payment Timetable" within clause 1 of the 2014 Agreement the words:

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"1000, 2000, 3000, 4000, 5000 and 6000"

shall be deleted and replaced with:

~~scribble~~
"1000 (in respect of the Secondary SEN Payment only), 2000, 3000, 4000, 5000 and 6000"

- 12 After clause 18 of the 2014 Agreement, there shall be inserted a new clause 19 as follows:

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"19 Mortgagee

*created
** any
*** with an interest in the Site from time to time
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 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 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."

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13 In part 1 of Schedule 3 to the 2014 Agreement, in the Obligation with reference number 11, before the words in the second column "Not to Commence the construction of any Dwelling", there shall be inserted the words:

"Save in relation to Key Phase 2"

- 14 In part 2 of Schedule 3 to the 2014 Agreement, in the Obligation with reference number 12, after the words in the second column "To pay to the County Council a Primary SEN Payment no later than each Trigger Event in the SEN Payment Timetable", there shall be inserted the words:

"unless otherwise agreed in writing between the Owner and the County Council"

- 15 In part 2 of Schedule 3 to the 2014 Agreement, in the Obligation with reference number 14, after the words in the second column "To pay to the County Council a

Secondary SEN Payment no later than each Trigger Event in the SEN Payment Timetable”, there shall be inserted the words:

“unless otherwise agreed in writing between the Owner and the County Council”

- 16 In part 1 of Schedule 4 to the 2014 Agreement after the heading “Part 1 – Key Phase Affordable Housing Delivery” there shall be inserted the words:

“ – the Obligations in Part 1 are subject to the Key Phase 1/2 Affordable Housing Delivery Arrangements”

- 17 In part 1 of Schedule 4 to the 2014 Agreement, in the Obligation with reference number 16, before the words in the second column “Not to Commence the construction of any Dwelling on Key Phase 1” there shall be inserted the words:

“Save for the Early Parcels (Blue)”

- 18 In part 1 of Schedule 4 to the 2014 Agreement, in the Obligation with reference number 17, before the words in the second column “Not to Commence the construction of any Dwelling on the Subsequent Key Phase” there shall be inserted the words:

“Save for the Early Parcels (Green)”

- 19 In part 1 of Schedule 4 to the 2014 Agreement in the Obligation with reference number 20, before “To provide” there shall be inserted the words:

“Subject to the Key Phase 1/2 Affordable Housing Delivery Arrangements”

- 20 In part 1 of Schedule 5 to the 2014 Agreement, in the Obligation with reference number 28, the words in the second column:

“In this obligation 27 including the fifth and sixth columns “Open Space” shall be construed as Formal Open Space, NEAPs or LEAPs”

shall be deleted and replaced with:

“In this obligation 28 including the fifth and sixth columns “Open Space” shall be construed as Formal Open Space, NEAPs or LEAPs”

- 21 In part 1 of Schedule 5 to the 2014 Agreement, in the Obligation with reference number 29, the words in the second column:

“In this obligation 27 including the fifth and sixth columns “Open Space” shall be construed as Formal Open Space, NEAPs or LEAPs”

shall be deleted and replaced with:

“In this obligation 29 including the fifth and sixth columns “Open Space” shall be construed as Formal Open Space, NEAPs or LEAPs”

- 22 In part 7 of Schedule 5 to the 2014 Agreement, in the Obligation with reference number 42, the words in the fourth column:

"Reserved matters Approval Date for the relevant Formal Open Space"

shall be deleted and replaced with:

"Reserved Matters Approval Date for the relevant NEAP".

- 23 In part 14 of Schedule 5 to the 2014 Agreement, in the Obligation with reference number 52, the words in the sixth column:

"Prior to the Occupation of 4750 Dwellings"

shall be deleted and replaced with:

"The Reserved Matters Start Date for the relevant Reserved Matters Area".

- 24 In part 14 of Schedule 5 to the 2014 Agreement, below and after the Obligation with reference number 52, there shall be inserted an additional Obligation with reference number 52A as set out in Schedule 3 to this Deed.

- 25 In part 1 of Schedule 6 to the 2014 Agreement, in the Obligation with reference number 56, the words in the fifth column:

"(other than any Residential Reserved Matters Area)"

shall be deleted.

- MR 26 In Annex C to the 2014 Agreement (Affordable Housing Review Process), in the opening paragraph between the words "The Affordable Housing to be provided on Subsequent Key Phases" and "shall comply with the following requirements" there shall be inserted the words:

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"(save that for Key Phase 2 this Annex is subject to the Key Phase 1/2 Affordable Housing Delivery Arrangements)"

- left 27 In Annex H to the 2014 Agreement (Supplemental Deed), clause 3.2 shall be deleted and replaced with:

created
"with an interest in the Land from time to time"
[The Chargee consents to the Owner entering into this Undertaking and it and each of the parties acknowledges that] any mortgagee or chargee ~~acquiring security~~ over any part of the Land ~~following completion of this Undertaking shall be bound by the obligations in this Undertaking and its security~~ shall take effect subject to this Undertaking ~~and so that any person deriving title from them shall be so bound~~ but PROVIDED ALWAYS THAT neither the Chargee nor any other mortgagee or chargee shall have any liability under this Undertaking in relation to any such part of the Land to which its mortgage or charge relates or shall relate unless it takes possession of that part of the Land pursuant to its mortgage or charge in which case it too will be bound by the said obligations as if it were a person deriving title from the Owner."

- MH 28 In the 2014 Agreement, after Annex H (Supplemental Deed) and before Appendix 1 (School Review Process Spreadsheet/Assumptions), there shall be inserted an Annex J as set out in Schedule 4 to this Deed.

29 After the Open Space Delivery and Management Plan in the 2014 Agreement there shall be inserted the Early Parcels Plan as set out in Schedule 5 to this Deed.

Schedule 3 – Obligation 52A

Ref	Obligation	Land Bound	Event	Land Released	Release Event
52A	Not to Occupy more Dwellings than shall exceed 5000 until the Canal Corridor Contribution has been paid to the Borough Council	The Site	Commencement of Development	The Site	Payment of the Canal Corridor Contribution
				Each Reserved Matters Area (but excluding any Residential Reserved Matters Area)	The Reserved Matters Start Date for the relevant Reserved Matters Area
				Each Residential Reserved Matters Area Identified before Occupation of 4750 Dwellings if on the date such Reserved Matters Area is Identified the total number of Dwellings within all Identified Reserved Matters Areas does not exceed 5000	The Reserved Matters Start Date for the relevant Reserved Matters Area
				Each other Residential Reserved Matters Area	The first date on which all of the Market Dwellings within the same shall have been Occupied
				Each Residential Reserved Matters Area in which all of the Dwellings are Affordable Housing Dwellings	The Reserved Matters Start Date for the relevant Residential Reserved Matters Area
				Each parcel of RP Land	The date of acquisition by a Registered Provider of the relevant parcel of RP Land
				Each Exempt Unit	The date when that Exempt Unit is acquired by a Beneficial Occupier

Schedule 4 – Annex J

Key Phase 1/2 Affordable Housing Delivery Arrangements

1. Key Phase 1 and Key Phase 2 will be combined for the purposes of the submission of a combined Key Phase Affordable Housing Delivery Plan. Across Key Phase 1 and Key Phase 2 combined:
 - a. the first 350 Dwellings will deliver nil Affordable Housing;
 - b. of the subsequent 150 Dwellings (i.e. the 351st – 500th Dwellings inclusive), 8 will be delivered as Shared Ownership Dwellings;
 - c. of the remaining capacity of the Early Parcels* 10% will be delivered as Affordable Housing in the Preferred Tenure Mix;
2. The Affordable Housing identified in sub-paragraphs 1(b) and 1(c) above will be delivered on the Early Parcels With Affordable Housing in accordance with an interim affordable housing delivery plan for the Early Parcels With Affordable Housing (rather than a Key Phase 2 Affordable Housing Delivery Plan). Reference in the definition of Affordable Housing Parcel Scheme to conformity with the relevant Key Phase Affordable Housing Delivery Plan shall for the Early Parcels with Affordable Housing be construed as meaning conformity with the interim affordable housing delivery plan for the Early Parcels with Affordable Housing.
3. The interim affordable housing delivery plan referred to in paragraph 2 is to be submitted to and approved in writing by the Borough Council prior to the Commencement of construction of any Dwelling on the Early Parcels With Affordable Housing.
4. The Review Process will then be carried out producing the Outcomes of the Review Process for Key Phase 1 and Key Phase 2 save for the Early Parcels allowing a combined Key Phase Affordable Housing Delivery Plan to be submitted to the Borough Council prior to Commencement of any Dwellings on Key Phase 1 or Key Phase 2 other than on the Early Parcels.

* (up to 135 Dwellings)

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Schedule 5 – Early Parcels Plan

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

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)
)
)

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D. H. H. well

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:

)
)
)
)



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[Handwritten 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:)

M. C. Crossin

Director



Director/Secretary

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



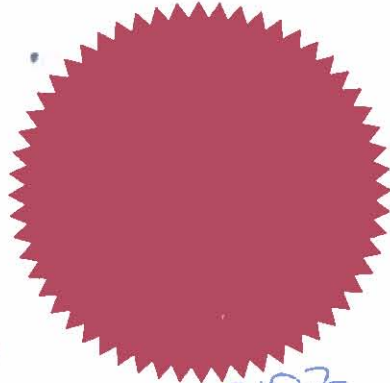
Director



Director/Secretary

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

)
)
)
)



Bayo Dosunmu
Assistant Chief Executive

156102

Name

A handwritten signature in blue ink, written over the 'Name' label. The signature is stylized and appears to be 'Bayo Dosunmu'.

Authorised Signatory

MILLS & REEVE



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