

HUNTS GROVE NOTE

1. A section 106 agreement dated 4 February 2008 was entered into between Stroud District Council (1) Colethrop Farm Limited (2) Crest Nicholson Regeneration Limited (3) and Marcus Beresford Heywood (4) to mitigate the impact of development pursuant to outline planning permission (ref: s106/1429/OUT) (the "S106 Agreement").
2. Crest has asked for advice as to whether the S106 Agreement obliges the Council to accept a transfer of the Public Open Space.
3. **Public Open Space Obligations**
 - 3.1 There is an obligation to include details about the timing and phasing of the Public Open Space as part of the Phasing Plan.
 - 3.2 The Public Open Space for each Phase must be completed prior to occupation of 75% of the Dwellings in a Phase (unless otherwise agreed).
 - 3.3 Occupation of more than 1250 is not permitted until all of the Public Open Spaces are completed.
 - 3.4 The Public Open Spaces shall be Transferred to the Council prior to Occupation of more than 1500 Dwellings (unless a later date is agreed) and the Public Open Spaces must be maintained until Transfer.

No alternative recipient is identified to accept transfer of the Public Open Space. The obligation rests entirely with the Council. The responsibility to maintain the Public Open Space lies with the Owner until Transfer to the Council.
4. Upon Completion of the Transfer a Commuted Maintenance Sum is payable; this is calculated in accordance with a formula as set out in the S106 Agreement.
5. The eighth schedule of the s106 agreement contains provisions relating to the Transfer of the Public Open Spaces all of which are drafted on the basis that the Council will be the transferee.
6. The sixth schedule obliges the Council to execute and complete any Transfer within 2 months from the date of that Transfer.
7. If the Council refuse to accept the Transfer of the Public Open Spaces then the remedy available to the owner of the Public Open Space would be to apply to the Court for a declaration as to the meaning and effect of the S106 Agreement AND subject to the Council's breach of those terms, an order of specific performance against the Council to accept the Transfer.
8. We have not seen any deed of variation that affects or alters the obligations in respect of Public Open Space.

DAC Beachcroft LLP

20 February 2018