

Annex 1 – Heritage Park, Penymynydd, Flintshire

With respect to that part of your request asking for the country of residence for each applicant at the time they applied, we believe this information should be withheld under s40(2) of the FOIA .

Section 40(2)

Section 40 of the FOIA sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1988 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come in to the possession of, the data controller”.

The first data protection principle.

This states:

*Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –
a) At least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the condition in Schedule 3 is also met.*

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*
- *If disclosure would not be fair, then the information is exempt from disclosure.*

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

In the instance of The Heritage Park, Penymynydd, there were two developers on this site, Redrow and Elan Homes who built a total of 88 units (56 and 32 respectively).

Of those 88 units, there were 7 successful applications to The Help to Buy – Wales Shared Equity Scheme.

As the numbers are small we considered that it there is a very strong likelihood that individuals in receipt of this financial support could be identified should we release their place of residence (even at Country level) at the time they applied. As such, we believe this, even in an anonymised form, is personal data. Further, as this relates to an individual, or couples, personal finances we believe this is "sensitive personal data".

Those applying for support through the "Help to buy" scheme would have had no expectation that, should they be successful in securing support that, their identities would be made public, except in those cases where they have consented for such information to be used to promote the scheme.

As we believe that the information is sensitive personal data, we are of the view that disclosure, without the explicit consent of these individuals, would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the FOIA. This is an absolute exemption and not subject to the public interest tests.