

**INSIGHT**  
**APRIL 2021**

# Effective or Defective:

The Housing Delivery Test



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# Executive summary

The Housing Delivery Test [HDT] is a monitoring tool that the Government produces annually to assess local planning authorities performance against their housing delivery targets over the past three years. Those that fall below 75% of their target are now subject to the NPPF's 'Presumption in Favour of Sustainable Development', also known as the 'tilted balance'. The intention of the HDT is to encourage local planning authorities to boost housing supply to avoid the threat of losing control of development in their areas.

However, in four out of five cases, the authorities that fail the most punitive threshold are those that cannot demonstrate an up-to-date Five Year Housing Land Supply, meaning the tilted balance has already been triggered via another avenue. In addition, around half of the authorities that fail this threshold are significantly constrained by Green Belt and/or other NPPF Footnote 6 designations, meaning that the 'very special circumstances' (or similar) required to justify new housing development will, in many cases, over-ride the tilted balance.

Having regard to the factors identified above, this report investigates how effective the Housing Delivery Test actually is as a mechanism to tackle housing under-delivery in practical terms, including a review of appeal decisions to understand how much weight inspectors are attaching to the HDT in the planning balance and how it can be improved.



# Key figures

55

authorities failed the 2020 Housing Delivery Test to the extent that the NPPF's 'Presumption in Favour of Sustainable Development' now applies to planning decision-taking

33

of these authorities have publicly accepted that they do not have a 5-Year Housing Land Supply, meaning the 'Presumption in Favour' is already in effect

11

of the remaining 22 districts have not published an up-to-date 5YHLS position

11

of the 55 LPAs have up-to-date evidence which suggests they do have a 5YHLS, meaning the tilted balance would theoretically be triggered as a result of the HDT failure

29

of these LPAs have over half of their land constrained by Green Belt/footnote 6 designations

7

of the 11 authorities with a stated 5YHLS have the majority of their land area covered by Green Belt or other Footnote 6 constraints, meaning the tilted balance is over-ridden

This leaves just 4 authorities nationally whereby the tilted balance would be triggered only as a result of the HDT and where the majority of the local authority area is not protected from development by footnote 6 constraints.

# 01 Introduction

The Housing Delivery Test [HDT] is a monitoring tool that the Government releases annually to assess whether local planning authority [LPA] areas are building sufficient homes to meet their housing need. Based on the outcome of this monitoring, Councils may be required to undertake further action, depending on the extent to which they have under-delivered.

As Figure 1 shows, the HDT has two components: past housing delivery and housing need:

- **Housing delivery** sums the last three years of net additional dwellings plus any communal housing;
- **Housing need** is identified as being the lower of either an up-to-date local plan housing target (adopted within the last five years); or, local housing need calculated using household projections for the years 2015/16 to 2017/18 and standardised objectively assessed housing need methodology for years from 2018/19 (plus neighbours' unmet need where relevant).

The results of this test fall into different categories where some form of action may be required:

There are three broad penalties that are dependent on the scale of under-delivery. For the 2020 version of the HDT (which was the third iteration, released in January 2021), Councils that have delivered only 85-95% of their housing need are required to produce an Action Plan to identify ways to support delivery, whilst Councils under-delivering by between 75%-85% also have to factor in a 20% land buffer to their Five Year Housing Land Supply [5YHLS].

Councils that have failed to deliver at least 75% of the number of homes needed in their area over the past 3 years are now subject to the National Planning Policy Framework's [NPPF's] 'presumption in favour of sustainable development'. This threshold has been increased from 25% in November 2018 and 45% in November 2019.

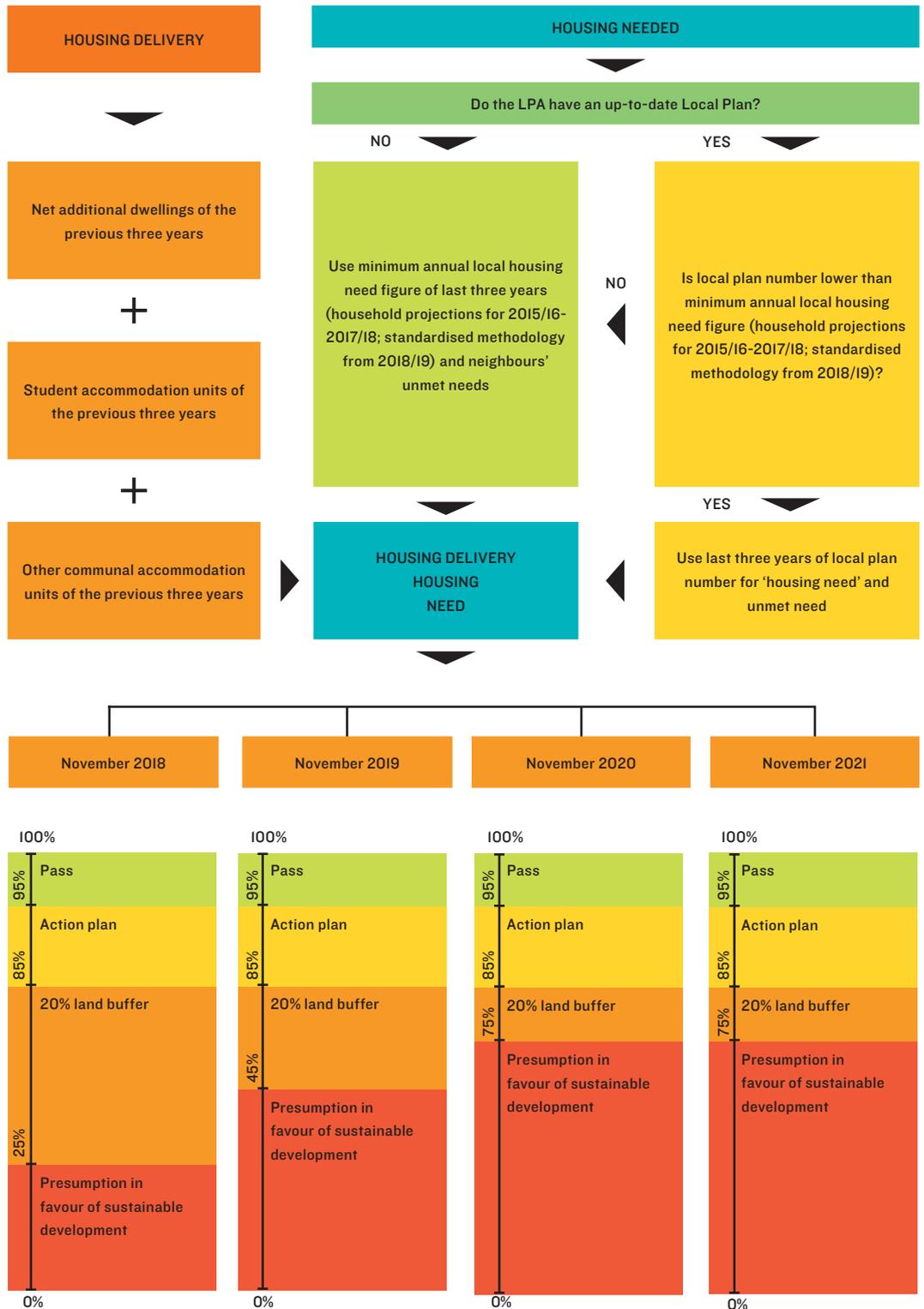
This means that for planning applications involving the provision of housing, the development plan policies which are most important for determining the application are considered to be out of date (which clarifies, in footnote 7 to this point, that this includes situations where the LPA cannot demonstrate a 5YHLS or where the HDT indicates that the delivery of housing was less than 75% of the housing requirement over the previous 3 years), and decision takers must apply a presumption in favour of sustainable development unless:



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Figure I: Housing delivery test methodology



Source: MGCLG; Lichfields

1. *“the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
2. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole (the so-called ‘tilted balance’).”<sup>1</sup>*

In theory, this represents a significant ‘stick’ to encourage Councils to facilitate housing delivery in their local areas, otherwise they risk beginning to lose control of the spatial development of their area and become increasingly vulnerable to speculative residential development applications on sites not allocated for such uses in their adopted Local Plans.

However, following the release of the latest Housing Delivery Test results on 19th January 2021 (relating to delivery for the three years up to 2020), there has been much speculation as to what (if any) effect this is actually having on decision-making and land promotion.

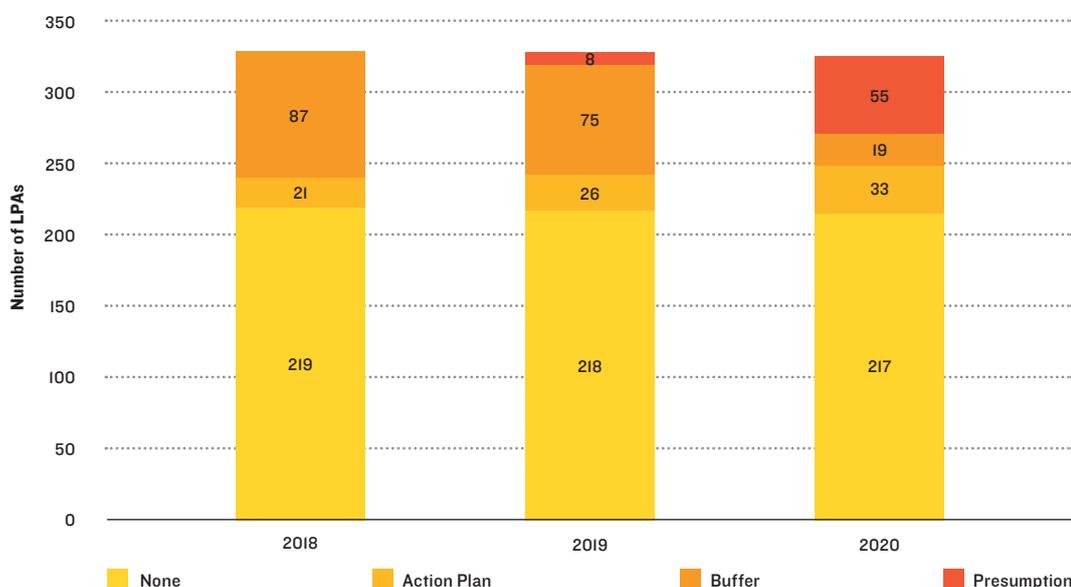
The test is relatively new, hence the Government built in time for it to bed down which, inevitably, created complexity, with

a ratcheted presumption in favour threshold that has risen progressively from 25% in 2018, to 45% in 2019 and 75% from November 2020. This threshold will remain stable for the foreseeable future, hence now is a good point to take stock of the impact of the HDT on England’s LPAs.

According to the latest HDT results for November 2020, 55 Councils across England face the ‘presumption in favour of sustainable development’ in their area, after failing to deliver at least 75% of the number of homes estimated by the Government to be needed in their area over the past three years. This has increased from just 8 in the 2019 HDT (with a 45% threshold) and zero in the 2018 HDT (25% threshold).

The proportion of local authorities facing the presumption in favour and requiring an action plan has significantly increased since 2018, whilst those facing the buffer has consequentially reduced. The number of authorities ‘passing the test’ has remained relatively constant.

Figure 2: HDT Results 2018-2020



Source: MHCLG Housing Delivery Test: 2018, 2019 and 2020 Measurement Spreadsheets

<sup>1</sup> MHCLG (2019): NPPF, paragraph 11d)

Of the eight districts that ‘failed the 2019 test’ (i.e. delivered under 45% of their housing need in the 2019 HDT, and which had the presumption in favour of sustainable development applied), six saw an improvement in delivery levels in the 2020 version while two saw a decline – Eastbourne and New Forest. However, the New Forest was something of an anomaly as the adoption of its Local Plan in July 2020 reduced the housing target, hence punitive HDT measures did not apply in 2020. This was not the case for 6 of the remaining 8 ‘2019 HDT presumption’ districts, which still had a 2020 HDT measurement below the 75% threshold (the outlier being the City of London, which managed to increase delivery more than seven fold of a much smaller target, over the year).

This research has been undertaken to help understand the practical impact of the HDT to test whether it is fulfilling its prime objective of penalising Councils that are failing to deliver the homes they need in an effort to unlock Housing Land Supply and address the current housing crisis.

Whilst some site promoters have begun to see this as an opportunity to target ‘vulnerable’ districts to get consents, there are many in the

development industry who perceive the HDT to be something of a hollow threat, as many districts that fail the HDT also lack a 5YHLS and therefore the ‘presumption in favour’ already applies.

Others suggest that many of the ‘HDT presumption’ districts are also Green Belt (or NPPF ‘footnote 6<sup>2</sup>) authorities, rendering the HDT threat less relevant for proposed development sites covered by these designations due to the very high bar for Very Special Circumstance [VSC] cases and the lack of supply from other sources.

This Insight examines whether the 55 Councils that have most severely failed the latest round of the HDT are likely to be penalised at a practical level, and whether this is likely to lead to the boost in housing land supply intended. As part of this assessment, we have also analysed how Planning Inspectors are interpreting the implications of the HDT in determining appeals, and whether they are increasing the weight to be afforded to new housing delivery if an authority fails both the HDT and the 5YHLS calculations.

Table 1.1 A comparison of HDT requirements and results for 2019 and 2020

	2019 HDT Results			2020 HDT Results			Supply Increased 2019-20
	Homes Required	Homes Delivered	HDT 2019 Measurement	Homes Required	Homes Delivered	HDT 2020 Measurement	
City of London	275	88	32%	283	674	238%	+766%
Havering	3,510	1,167	33%	3,414	1,238	36%	+6.1%
Thanet	2,616	923	35%	1,749	948	54%	+2.7%
Eastbourne	1,199	460	38%	1,571	457	29%	-0.7%
Three Rivers	1,367	560	41%	1,619	872	54%	+55.7%
New Forest	2,415	1,038	43%	875	933	107%	-10.1%
Basildon	2,506	1,093	44%	2,824	1,257	45%	+15.0%
North Hertfordshire	2,395	1,042	44%	2,597	936	36%	-10.2%
<b>ALL</b>	<b>16,283</b>	<b>6,370</b>	<b>39%</b>	<b>14,932</b>	<b>7,315</b>	<b>49%</b>	<b>+14.8%</b>

Source: MHCLG Housing Delivery Test 2019 and 2020 Results

<sup>2</sup> The application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The policies referred to are those in the NPPF (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.

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## Approach

This research is based on an analysis of the local planning authorities that have failed the Housing Delivery Test, and in particular, those for whom the presumption in favour of sustainable development would apply as a result (the 55 HDT 'presumption' authorities). It seeks to establish whether the threat of becoming a 'presumption' authority as a result of failing the HDT is likely to have a significant impact on housing delivery for those affected authorities, or whether it is effectively an empty threat because the LPA:

- Cannot demonstrate a 5YHLS, hence the presumption in favour is already triggered; and/or
- Is a Green Belt/Footnote 6 authority, hence the stringent approach that many decision makers take to VSC usually over-rides the tilted balance, rendering the HDT threat largely irrelevant. **This is only directly the case where a proposed development site is subject to a Footnote 6 designation but has an indirect impact on the effectiveness of the 'presumption' in boosting supply.**

### Our approach is as follows:

1. **Mapping the 55 districts which failed the 2020 Housing Delivery Test** and set out which districts have fallen into the presumption in favour category, and where in the country this has been concentrated;
2. Of the 55 districts to have delivered less than 75% of their housing requirement in the three years to 2020, examine the current published **Five Year Housing Land Supply** of each authority. This has simply involved a straightforward review of each council's most up-to-date SHLAA or Housing Land Monitoring Report. It should be noted that in undertaking this review we have taken each local authority's stated position regarding Housing Land Supply at face value, we have not appraised the validity of their approach in detail (and hence it should not be considered that Lichfields agrees with each Council's assumptions on their 5YHLS). Furthermore, if the 5YHLS evidence pre-dates March 2019 and is more than 3 years old, we have assumed that it is out of date unless there is strong evidence to the contrary. This is on the basis of the national changes to calculating land supply that have taken place with the publication of the revised NPPF in February 2019;
3. Set out whether the district in question has an **up-to-date Local Plan**;
4. **Map Green Belt/footnote 6 land** constraint boundaries and examine the extent to which they overlap with the boundaries of the 55 districts.
5. Undertake a review of **recent appeal decisions** to understand the extent to which Inspectors have factored a council's failure to meet the relevant HDT presumption threshold in their decision making. A point to note here is that because the 2020 results were only very recently published (in January 2021), at the time of writing (March 2021) there are likely to have been very few inquiries in the 55 districts where the 2020 HDT has been raised as an issue for the Inspector to consider. We have therefore reviewed appeal decisions relating to those 8 authorities that failed the 2019 HDT presumption threshold (of 45%). Furthermore, if a Council has failed both the HDT and 5YHLS calculations, we have examined whether Inspectors have effectively 'doubled the weight' to be attached to new housing provision as a consequence, or whether they afforded the HDT no extra weight in the planning balance.
6. Provide a view as to whether the HDT is likely to **make a practical difference** in unlocking Housing Land Supply in those areas most affected going forward.

<sup>1</sup> Rhodes, C. – Infrastructure Policy, House of Commons Briefing Paper Number 06594 (2015)

<sup>2</sup> ONS - Output in the Construction Industry 2015 Q2

# 03 Do the authorities have a 5YHLS?

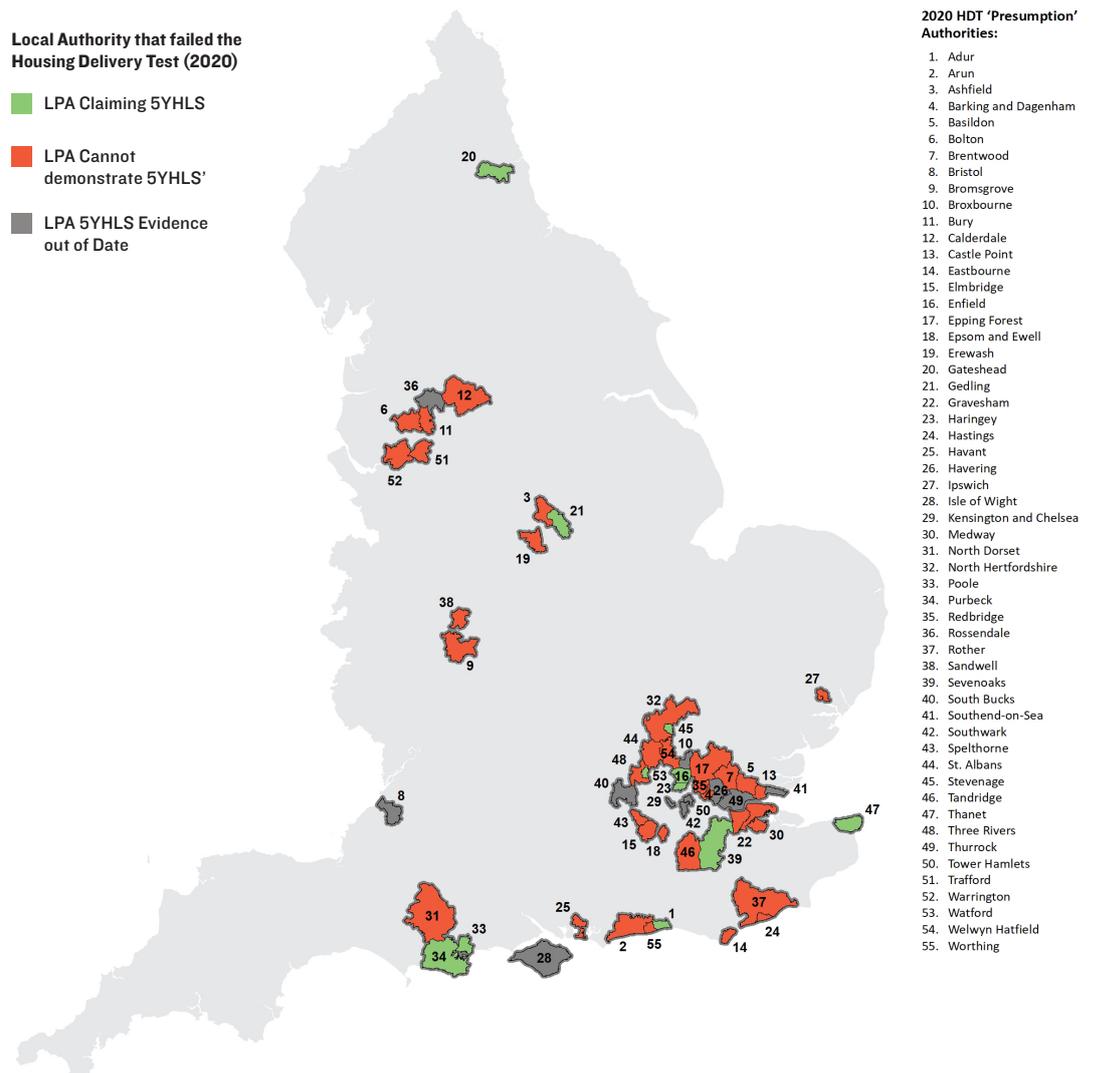
We have undertaken a review of the 5YHLS evidence for the 55 authorities that failed to deliver at least 75% of the required homes in their area over the past 3 years (to 2020). Of these 55 districts, 11 have evidence that is significantly out of date (i.e. with a base date of 2018 or earlier).

Of those remaining 44 authorities with an up-to-date housing land supply evidence base, **just 11** authorities state in publicly available documents that they can demonstrate a 5YHLS – 33 authorities state within their evidence base documents that they cannot.

Spatially, a disproportionate number of authorities are located in the south east, with a particularly high proportion being focused around London and the south coast. Seven authorities are located within Greater London itself, whilst there are many more located within the surrounding Home Counties. A number of failing authorities are also focused in the north-west, including four authorities within the Greater Manchester conurbation.

This is illustrated in the following diagram:

Figure 3: Location and 5YHLS position of HDT 'Presumption' Authorities



Source: Lichfields Analysis of LPA's Monitoring Data

It can be seen that in 4 out of 5 cases, the presumption in favour of sustainable development already applied, regardless of the results of the Housing Delivery Test. The absence of a 5YHLS or outdated evidence ensured that the relevant development plan policies of the authorities in question were already considered to be 'out of date' (for the purposes of footnote 7 of the NPPF).

It therefore corresponds that the 2020 HDT **will in practise trigger the presumption in favour of sustainable development for only 11 (or 20%) of the local authorities in question for whom the tilted balance has not already been engaged.**

It should be noted that the figure of 20% represents the **best-case scenario**, as we have not appraised the robustness of the supply evidence of those authorities that state they do have a Five Year Housing Land Supply; this has been taken at face value.

As a result, it is likely that that in some cases the Council's stated 5YHLS position will not be defensible. To consider Sevenoaks District Council as just one example, the Council's latest publicly available evidence (2019) states that it has a five year supply and in our analysis, we have included it as one of the 11 districts for whom the tilted balance was not triggered by the Housing Delivery Test. However, a recent appeal decision<sup>3</sup> from March 2020 indicates that this 5YHLS is based on allocations which are not yet adopted, with the Inspector concluding that it cannot demonstrate a five year supply as a result:

*"For the purposes of this appeal therefore, the only conclusion can be that the Council cannot demonstrate a five year housing land supply and that the market housing as well as the affordable housing contributed by the development would be a substantial planning benefit, in the face of an agreed acute shortfall in Sevenoaks in both sectors." [para 70]*

It is also of note that, of the 11 authorities that state that they can demonstrate a 5YHLS, there are many on the cusp, with all but one claiming to have between 5.0 and 5.9 years.

As identified above, the best-case scenario is

that the Housing Delivery Test will only matter (in practical terms), for 11 of the 55 authorities in question, and this is before considering restrictive footnote 6 designations.

## Appeal case studies

Our review finds that inspectors are not 'doubling', or applying additional weight to the tilted balance where it has already been activated as a result of a lack of forward housing land supply. In fact, in the majority of cases, the Housing Delivery Test was not even mentioned in the appeal decision. It is of course noted that the NPPF doesn't require this 'doubling of weight', but it could be expected in acknowledgement of the supply problems for a particular, failing, LPA. Often however, this is not the case.

North Hertfordshire District Council is among a minority of authorities who have failed the 75% HDT threshold for two consecutive years (2019 and 2020). The development plan comprises the North Hertfordshire District Local Plan, adopted in 1996. The Council's emerging Local Plan is at an advanced stage of examination.

The Council's latest evidence (dated 1st April 2020) states that the Council can demonstrate a Housing Land Supply of 2.2 years. Therefore, the tilted balance is already engaged irrespective of the HDT.

Several appeal decisions indicate that North Hertfordshire's (consecutive) failure of the HDT is afforded very little, if any additional weight in the planning balance.

Appeal reference APP/X1925/W/20/3260353 relates to the Council's refusal of an application for 'Permission in Principle for the erection of 7 dwellings at land north of Jacksons Lane, Reed, Hertfordshire'. The site is located partially within Reed Conservation Area.

Paragraph 27 made clear that the tilted balance was engaged as a result of the shortfall in the Council's Housing Land Supply:

*"It is not in dispute that there is a significant shortfall in the Council's Housing Land Supply. Consequently, paragraph 11 of the Framework is*

<sup>3</sup> APP/G2245/W/19/3221581

*engaged.”*

Paragraphs 28 and 29 then go on to identify that footnote 6 constraints provide a clear reason for refusal:

*“This states that where there are no relevant development plan policies, or the policies are out of date, planning permission should be granted except where the application of policies in the Framework provides a clear reason for refusal. Footnote 6 includes those relating to heritage assets amongst the list of those policies.*

*As the appeal proposal would result in harm to the significance of the Conservation Area which would not be outweighed by the public benefits of the development, the application of policies in the framework does provide a clear reason for refusal in this instance.”*

The appeal was dismissed on 17th February 2021.

The implications of footnote 6 constraints are explored subsequently in this report, but it is of particular note that North Hertfordshire's failure of the Housing Delivery Test, or even the

matter of delivery, was not mentioned in the Inspector's report.

Appeal reference APP/X1925/W/20/3249581 relates to North Hertfordshire District Council's refusal of an application for the erection of 3 dwellings at Mill Road, Royston.

As with the previous example, the inspector acknowledged [§31] that the tilted balance was engaged as a result of the shortfall in housing. Again, the failure of the Housing Delivery Test, and under-delivery was not mentioned or factored into the planning balance.

We came across many similar examples of this nature (across a range of authorities); these decisions are not outliers. It appears that the failure of the Housing Delivery Test (particularly in those authorities who have failed to demonstrate a 5YHLS) is frequently ignored in decision making.



# 04 What about the Green Belt (and other Footnote 6 Land)?

## To address the Green Belt...

In effect, the designations are a double-edged sword as an incentive to boost housing delivery - on the one hand, by reducing the amount of land that is available for development, the designations make it significantly harder for Councils to deliver sufficient land to meet housing targets which are essentially demand, rather than supply-based. For those authorities that have substantial Green Belt land, only the plan-led system provides the basis for considering the balance between housing need and this restrictive allocation. Unfortunately, plan preparation is demonstrably slower in Green Belt areas than elsewhere<sup>4</sup>.

On the other hand, the very presence of these designations means that these authorities

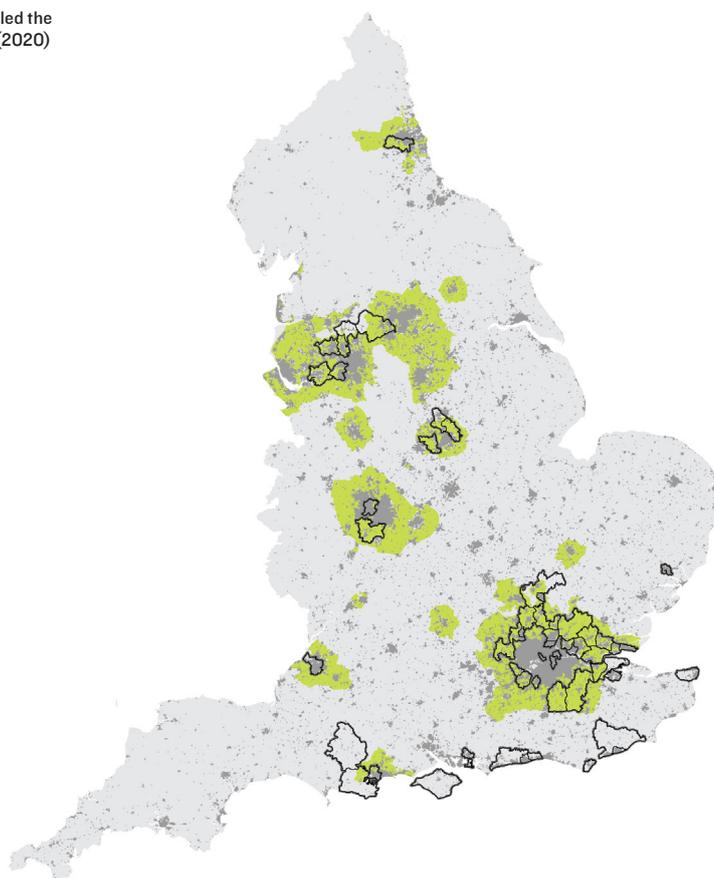
can rely on footnote 6 constraints to resist speculative developments in these areas due to the very high bar that VSC represents for decision makers. This may arguably suit some authorities, as avoiding preparing a Local Plan with Green Belt releases delays the difficult political decisions and local opposition that might arise

As a result, there is a perception amongst many in the development industry that many of the HDT presumption authorities are effectively insulated from the consequences of the tilted balance due to their footnote 6 safety net.

To see whether this is playing out in practice, we have overlain a Green Belt map over the 55 HDT presumption districts. As can be seen in the Figure above, an overwhelming majority of the

Figure 4: Location of HDT 'Presumption' Authorities and the Green Belt

- Local Authority that failed the Housing Delivery Test (2020)
- Green Belt
- Urban



Source: Lichfields Analysis

<sup>4</sup> Lichfields (April 2017): Planned and Deliver - Local Plan making under the NPPF

55 authorities are located within the Green Belt (either wholly or in part):

The above image illustrates the striking correlation between the 55 authorities to fail the 75% threshold and the extent of the Green Belt. Due to the 'very special circumstances' required to justify new housing developments in the Green Belt, the presumption in favour of sustainable development or the 'tilted balance' is effectively deactivated in the vast majority of cases, thus disincentivising poorly performing LPAs from catching up with years of past under-delivery<sup>5</sup>.

We have undertaken a comprehensive review of appeal decisions from those authorities that failed the 2019 HDT (released in February

2020) and the 2020 HDT (released in February 2021). In the overwhelming majority of cases, where the proposed development was situated within the Green Belt, the tilted balance was disengaged or otherwise outweighed by the need to demonstrate very special circumstances.

### **Other Footnote 6 Constraints**

When viewing the Green Belt boundaries in isolation, one could be forgiven for thinking that a number of HDT presumption authorities, most specifically along the south coast, are unconstrained and therefore represent areas of opportunity for speculative development. The image below shows that this is, in fact, not the case.

### **Case study: Basildon Borough Council**

Basildon Borough extends over a total area of 11,045 ha, of which 6,901 ha is located within the Green Belt – a significant 62% of land is therefore located in areas where development proposals have to demonstrate very special circumstances in order to be approved. In addition, 39.5% of land is located within areas that are already identified as 'built-up' by the Office of National Statistics.

According to the Council's most recent 5YHLS Report (2019), they have between 2.4 years and 3.7 years supply of housing land. Furthermore, Basildon has failed the HDT both in 2019 and 2020, delivering just 44% in 2019 and 45% in 2020 – therefore the presumption in favour of sustainable development was applied for both years. However, the practical impact of these failures is difficult to measure.

To take just one recent example, a proposal to remove commercial boarding kennels including demolition of all buildings and associated engineered surfaces, change of use to residential and construction of 5 dwelling houses on land at Cranfield Boarding Kennels (ref. APP/V1505/W/20/3259504)

was dismissed on 25th February 2021 (so after the 2020 HDT results were published on 19th January 2021). The proposed development site was located within the Green Belt.

When determining the appeal, the Inspector stated that:

*"The Council does not have sufficient five-year housing land supply and the policies of most relevance for the determination of this appeal... are either rendered out of date or are unadopted and so carry limited weight. Consequently, Paragraph 11 d) of the Framework is engaged.*

*The harm to the Green Belt, by reason of inappropriateness, and the other harm identified above, is not clearly outweighed by other considerations. That being so there are not the very special circumstances required to justify the proposal.*

*Moreover, Paragraph 11 states that even where the tilted balance applies permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, one of which is the Green Belt, provide clear reasons for refusal." [para 33]*

<sup>5</sup> It should be noted that the contribution a development would make to an inadequate housing supply is not generally considered to comprise Very Special Circumstances. It has long been held that unmet housing need would not be held to constitute VSC for the purpose of releasing land from the Green Belt and this view has been supported by a Circular issued on 9th July 2015 and a Written Ministerial Statement [WMS] issued in December 2015, with the former clarifying that unmet housing need is unlikely to amount to very special circumstances capable of outweighing the harm caused by inappropriate development in the Green Belt. However, several recent appeal decisions have given the WMS little weight as a material consideration on the basis that it pre-dates the revised NPPF, whilst a handful of decisions seem to suggest that the direction of travel is starting to shift slightly, with Inspectors increasingly willing to see housing need as being a significant component of the VSC case. This is still the exception rather than the norm for the time being.

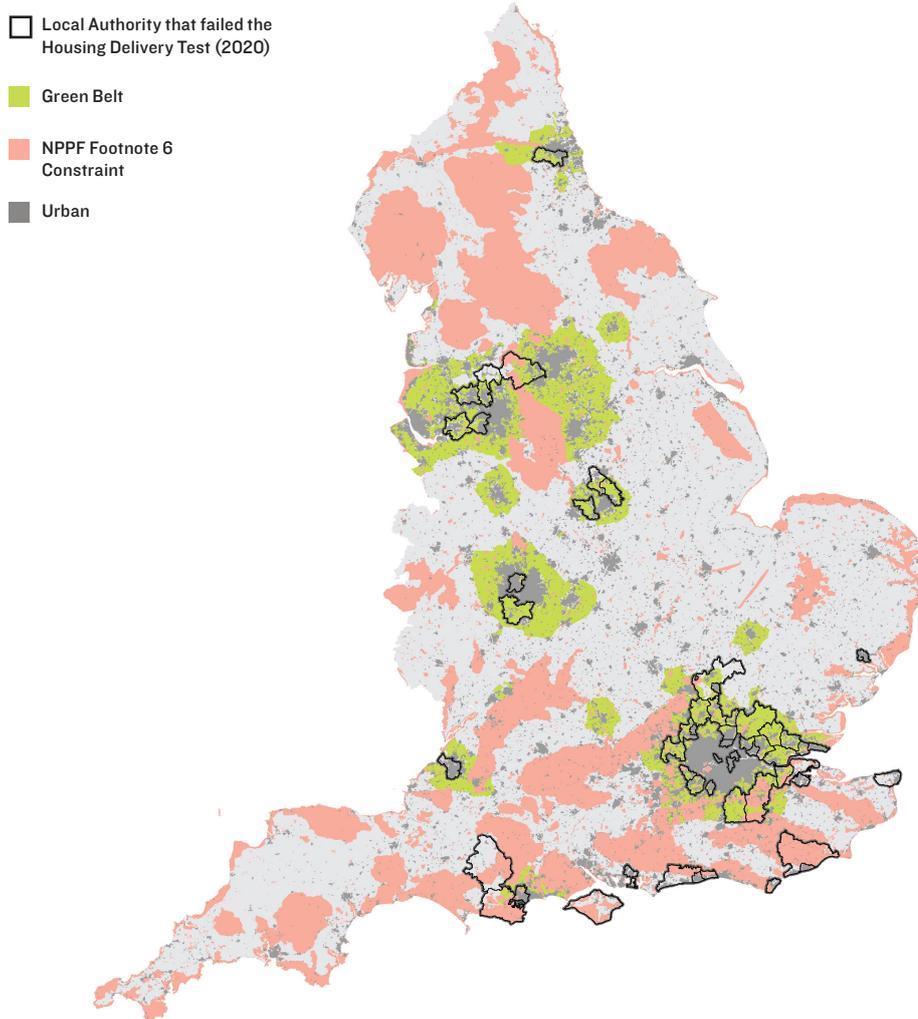
As illustrated below, when considering the Green Belt as well as other footnote 6 constraints (for the purposes of this exercise, excluding areas of flood risk but including Areas of High Landscape Value, Local Green Space, AONBs, National Parks, the Broads Authority, Heritage Coasts, irreplaceable habitats, designated heritage assets and other assets of archaeological interest), a majority of the authorities are significantly constrained. Like the Green Belt policy designation, the presence of these NPPF footnote 6 constraints have the potential to over-ride the tilted balance (note - this is only the case where a proposed

development site is subject to a Footnote 6 designation).

Figure 6.1 illustrates the proportion of districts with high (and low) percentages of Green Belt/ footnote 6 coverage. As shown below, a total of 29 authorities have between 51 to 100% of their land covered by these constraints. A further 12 authorities have between 26 – 50% and a mere 14 authorities have between 0 to 25%.

From our review of appeal decisions from the 2020 HDT presumption authorities, it is apparent that in all of the cases relating to sites located on Green Belt or other footnote 6 land,

Figure 5: Location of HDT 'Presumption' Authorities, the Green Belt and footnote 6 land



Source: Lichfields Analysis

the presumption in favour was disengaged or otherwise outweighed by these other considerations.

Figure 6.2 shows the proportion of districts with high (and low) percentages of land that is already urbanised. For the purpose of this study, urban is defined as land identified as ‘built-up’ by the ONS. The proportion of existing urban land is relevant, because in built-up and areas there may be less opportunities for speculative development, and there would generally be a presumption in favour of such infill developments in any case, arguably making the ‘tilted balance’ less relevant. Therefore, for the 11 authorities who have between 76 – 100% of their land in existing built-up areas, the practical impact of failing the Housing Delivery Test may be limited.

### Land supply and constraints

In order to establish which authorities will theoretically be affected by the HDT’s presumption in favour of sustainable development, we have cross referred the 11 authorities who consider they have a 5YHLS, against those with Green Belt/footnote 6 constraints.

As can be seen in Figure 6.3, of these 11 LPAs, 7 (including Gateshead, Gedling, Purbeck, Adur, Poole, Sevenoaks, and Enfield) are heavily constrained by both Green Belt and/or Footnote 6 constraints, and hence the tilted balance would be deactivated for many of the potential development sites in these areas.

In total, only 4 of the authorities who claim they have a 5YHLS are (mostly) free from

Figure 6.1: Percentage of land within GB and other Footnote 6 constraint

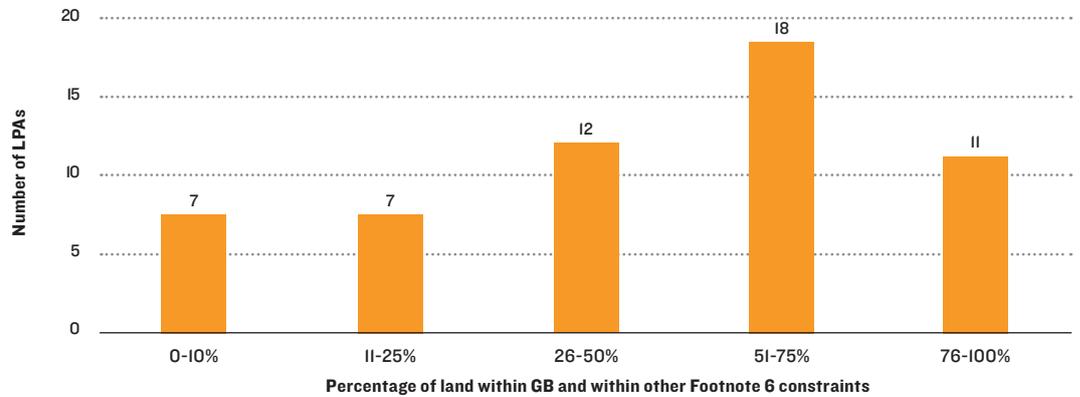
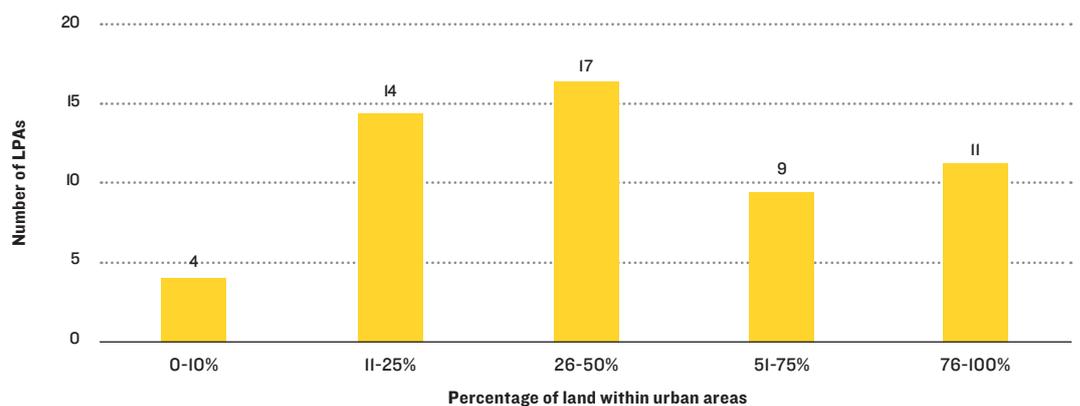


Figure 6.2: Percentage of land within urban area



Source: Lichfields Analysis

footnote 6 constraints. These are Watford (19% coverage), Haringey (8% coverage), Stevenage (7% coverage) and Thanet (9% coverage). In theory, these are areas of opportunity for unplanned development (where footnote 6 constraints do not apply).

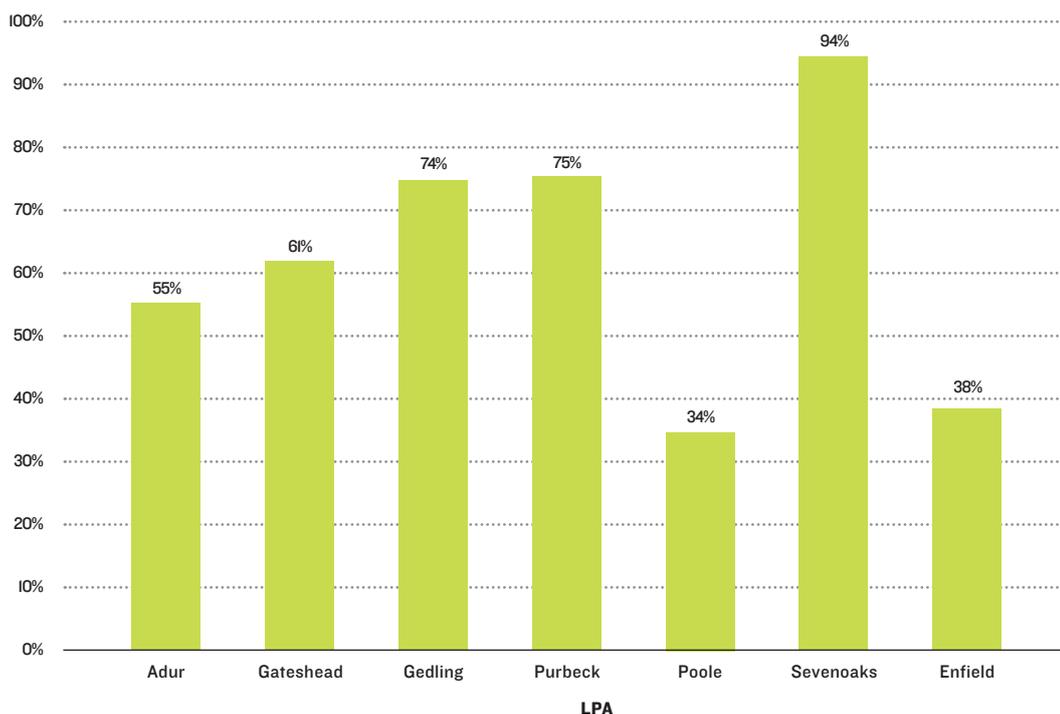
However, three of these authorities (Watford, Stevenage and Haringey) are predominantly urban districts with tightly defined boundaries. Indeed, of all the 327 districts we have reviewed as part of this study, only 1 district fails the HDT 75% threshold; is relatively unconstrained by Green Belt / Footnote 6 designations, is not predominantly urbanised and has (according to the Council) an up-to-date 5YHLS – Thanet in Kent!

If this logic is carried forward, this just leaves Thanet as the only authority in England where (as of March 2021), the HDT presumption in favour of sustainable development has the potential to make a significant impact in terms of housing delivery.

## Concluding remarks

The analysis indicates that for almost all of the 2020 HDT presumption authorities, the presence of either Green Belt and/or footnote 6 constraints on much of the land effectively negates the effectiveness of the Housing Delivery Test as a tool to boost housing delivery. In all the case studies we examined from recent appeal decisions, the balance did not 'tilt' in favour of sustainable development due to the need to demonstrate VSC – the presumption in favour becomes an empty threat, both for the 5YHLS avenue and the HDT approach. Furthermore, we could find no examples where an Inspector sought to 'double the weight' attached to the tilted balance if both the 5YHLS and HDT tests were failed by a poorly performing Council. In fact, we have been unable to find an example where the HDT was even mentioned positively in the planning balance.

Figure 6.3: Percentage of land within GB or other footnote 6 constraints



Source: Lichfields Analysis

# 05 Summary and Conclusions

On 19th January 2021, MHCLG published the results of the 2020 Housing Delivery Test. It shows that 17% of local planning authorities (55 authorities) face the presumption in favour of sustainable development or 'tilted balance' penalty.

Spatially, this under-delivery is most acute in the greater southeast and southern coastal areas; however it is also a challenge amongst some of the north-western local authorities particularly those surrounding Greater Manchester. 20% of the LPAs in question did not have an up-to-date Local Plan. It seems likely that slow Plan preparation (which in itself may be impacted by the challenges surrounding Green Belt designations) plays a role in under-delivery.

Ultimately, the HDT's tilted balance mechanism is designed to boost housing delivery in poorly performing local authorities by making it easier to secure permission for unplanned housing development. However:

1. The majority of the authorities in question (44 out of 55) either have a housing land supply evidence base which is out of date, or agree that they cannot demonstrate a 5YHLS. In such areas, a review of appeal decisions has confirmed that inspectors are not applying 'additional' weight in these cases (combining the failure to meet the HDT and 5YHLS targets), as the tilted balance is already engaged.
2. Most of the HDT presumption authorities are significantly constrained by the Green Belt and/or other footnote 6 designations, meaning that the very special circumstances required to justify new housing development is likely to deactivate the tilted balance on designated sites. A review of appeal decisions has confirmed that in almost all cases, the tilted balance is disengaged or outweighed by the need to demonstrate VSC, which neuters the effectiveness of the HDT 'stick'.
3. Of the 11 authorities with a stated 5YHLS (meaning the tilted balance could be triggered as a direct result of the HDT failure), 7 are heavily constrained by footnote 6/Green Belt designations,

effectively disengaging the tilted balance in many cases.

4. Of the remaining 4 authorities, three are predominantly urban in nature, which may reduce the impact of the tilted balance on speculative greenfield housing sites in real terms.
5. The result is that in practice, housing supply in just one authority (Thanet) is likely to be significantly boosted by the presumption in favour of sustainable development triggered by the HDT.

Based on the analysis above, it would appear that the Government's HDT mechanism which seeks to address under-delivery is, in the vast majority of cases, toothless. Without significant reform, this represents a flawed policy mechanism which derives from the fundamental clash between the need to provide more housing versus the understandable desire to protect footnote 6 land. This is particularly concerning, given that the Government's current proposals to reform the planning system recommend the removal of the 5YHLS penalty in its entirety, and to rely on the HDT alone to boost housing delivery in poorly performing council areas.

There are a number of potential solutions that could be considered in order to address this policy failure.

- 1** The Government could, through clarification in the Planning Practice Guidance or by way of amendment to the Framework itself, stipulate that significant under-delivery in the HDT must be given additional weight in its own right, over and above the 'tilted balance' which arises from the failure to demonstrate a 5YHLS.
- 2** Additional guidance could also require that when determining applications, the contribution to Housing Land Supply could amount to VSC in situations where LPAs fail to demonstrate a 5YHLS AND fail the 75% HDT delivery threshold.
- 3** This of course depends on whether or not the Government does indeed intend to retain the 5YHLS requirement at all. We would suggest that its removal and replacement with the HDT will simply replace one arguably ineffective mechanism with another, and without significant improvements is unlikely to boost housing delivery.

Given that one in five of the authorities in question do not have an up-to-date evidence base, the Government may wish to consider focussing its efforts on a greater degree of intervention, to ensure that LPAs progress their Development Plans as soon as practically possible.

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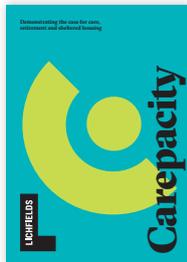
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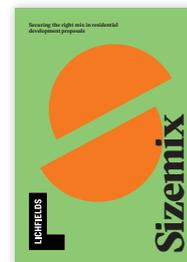
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